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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE LINN & LANE TIMBER COMPANY and Charles A. Smith, appellants,
v.
THE UNITED STATES.
} No. 159.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case will be argued with No. 46. The conspirators named are Frederick A. Kribs, Charles A. Smith, Charles J. Swanson, O. Judd Mealey, Will Mealey (the same person who selected the tracts of timber land in case No. 46), John O. Thompson, and other, unknown persons. The entrymen are of course different parties and were named as defendants with Smith, Kribs, and Swanson. The suit was brought to cancel 18 patents which were obtained under the timber and stone act, but was discontinued by the United States as to the patent issued to Fred Wodtli (R., 32–33), who purchased with his own money (R., 587). Of the remaining seventeen pat-

ents, eight were issued on July 9, 1902, and nine on August 12, 1902.

The applications were filed during May, June, and July, 1900. Final proofs were made in August and October, 1900. In several instances the entrymen gave mortgages to Kribs on the day of final proof, and all of them made deeds to Kribs on that day or within a few days thereafter. There is printed as an appendix to this brief a schedule similar to that in case No. 46, showing the names of the entrymen, dates of applications, dates of final proofs, dates of mortgages to Kribs and *dates* of deeds to Kribs. It will be remembered that in case No. 46 Kribs negotiated with Puter and McKinley in April, 1900. In connection with Kribs's knowledge of this fraud, it is important to note that in the case of these seventeen patents the initial applications were all filed after that time.

The bill was filed on May 25, 1908 (R., 9), and the pleadings took exactly the same course as those in No. 46 and were filed on the same days, respectively. The pleas in abatement were filed by Kribs, the Mealeys, Thompson, and several of the entrymen, and by Smith and Swanson (in the bill named as Swenson) on September 5, 1908, and October 8, 1908, respectively. A joint and several answer to the amended bill was filed by Smith, Swanson, and Kribs on January 29, 1909 (R., 86), and a separate answer by the company was filed the same day (R., 104).

The allegations of the bill, except as to the parties defendant, are practically the same as in case No. 46, as are the issues made by the subsequent pleadings. The only material difference between the bill in this case and that in No. 46, except as already noted, is that it alleges that after Kribs acquired title to the land in suit, he and his wife conveyed to the defendant Smith on October 24, 1904, a three-fourths undivided interest and on December 28, 1904, Kribs and wife conveyed to Swanson a one-fourth undivided interest in said lands.

After the filing of the pleas in abatement, setting up that all interest in the land had passed to the Linn and Lane Timber Company, an amended bill was filed, alleging the transfer to the company by Smith and wife of the said three-fourths interest on June 4, 1906 (which is the same deed by which Smith and wife conveyed to the company in the other case), and that Swanson and wife conveyed to the company on May 28, 1907. This deed of Swanson and wife was also kept from the record until September 9, 1908 (R., 489).

Appellants make no claim that the suit was not seasonably commenced against Smith as to the patents dated August 12, 1902; proper service was made on the defendant within six years after the date of the issuance of such patents. A question is raised in that behalf as to the patents issued July 9, 1902; the facts appear to be as follows:

The residence of none of the defendants was given in the bill. At that time Smith and Swanson re-

sided at Minneapolis, Minnesota. On the day the bill was filed, May 25, 1908, a subpœna *ad respondendum* was issued against all defendants, returnable July 6, 1908 (R., 30–31). On July 20, 1908, the marshal made his return, which as to Smith, Swanson, and Gould was *non est inventus* (R., 29). On July 27, 1908, an order was issued to said three defendants to appear, plead to, answer, or demur to the bill within sixty days from the time of service (R., 38–40). The return of the marshal on this order shows that it was served on Smith and Swanson at Minneapolis on August 11, 1908 (R., 37–38). No return seems to have been made as to Gould, but as he had parted with all of his interest to the lands in suit, that fact is immaterial. It is claimed by the defendants that as to the eight patents issued July 9, 1902, the suit was not commenced against Smith and Swanson until after six years from the date of issuance of patents because the warning order was not served on them within that time and therefore the suit is barred by limitation. This question will be fully considered in this brief under the heading "Statute of Limitations."

ACTION TAKEN BY THE LOWER COURTS.

This case was No. 3319 in the trial court and No. 1972 in the Circuit Court of Appeals. As stated in the brief in No. 46 before this court, the two cases were tried and heard together in the two courts below. There is a stipulation that any evidence applicable may be used in either case (R., case No. 46, p. 987).

The court found that all of the patents were obtained by fraud and granted the relief asked as to the patents dated August 12, 1902, but denied it as to those dated July 9, 1902 (R., 901). The opinion will be found commencing at page 883 of the record.

As to the eight patents dated July 9, 1902, the court held that the suit was not commenced until the warning order was placed in the hands of the marshal for service, which was July 27, 1908; that the statute was not arrested until discovery of the fraud, but ran from the date of the patents, and that therefore these eight patents were barred as to all defendants, including the Linn & Lane Timber Company.

The Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson, and Frederick A. Kribs, prosecuted an appeal to the Circuit Court of Appeals for the Ninth Circuit, and the United States also appealed. The case was heard in the appellate court, and the opinion (R., 931) covers the entries both in this case and those in No. 46. The Circuit Court of Appeals did not pass upon the question as to whether the suit was commenced against Smith at the time of the issuance of the warning order or before, because the holding of the trial court that the statute of limitations commenced to run from the date of the patents and not from the date of the discovery of the fraud was overruled.

The decree of the trial court was "affirmed" (R., 939). As the Circuit Court of Appeals held that the running of the statute was arrested until the discovery of the fraud, this unqualified affirmance was plainly

an error, which caused the United States Attorney to move for a modification of the order and decree to the end that the trial court should be affirmed as to the nine patents issued August 12, 1902, and reversed as to the eight patents issued July 9, 1902 (R., 940). This motion was granted (R., 945). In doing so the court said:

> Upon a careful reconsideration of the authorities we are of the opinion that the fraud of the defendants as alleged in the bills and shown by the facts was sufficient to toll the statute of limitations as to all the lands involved in the suits. The fraud not only antedated the patents, but after the patents were issued fraudulent conveyances were made and concealed and kept from record obviously for the purpose of covering up the prior fraudulent transactions.
>
> We find it unnecessary to express an opinion upon the question whether the court below was in error in holding that the suits were not brought as to the defendant Smith until July 27, 1908, the date of the order directing substitute of service upon him, and that as to him the suits were not begun on May 25, 1908, when subpœnas ad respondendum were issued as against him as well as the other defendants, and placed in the hands of the United States marshal for service.
>
> The decree of this court will be amended in accordance with the motion. The causes will be remanded to the court below to enter decrees for the United States as to all the lands sued for in both suits (R., 946).

From this decision the Linn & Lane Timber Company and Charles A. Smith prosecuted an appeal to this court.

TWO LOWER COURTS HAVE CONCURRED IN THE FINDINGS OF FACT.

Reference is made to the authorities cited under this head in the brief of appellee in case No. 46.

GENERAL HISTORY OF THE ENTRIES.

Generally speaking, the entrymen in this case were offered $50 each for their entries instead of $75 to $100, as in case No. 46, and the scheme was promoted by Kribs, William R. Mealey, O. Judd Mealey, and John A. Thompson. The Mealeys lived near Sweet Home, and Thompson near Foster, Oregon. The land in this suit is in the immediate vicinity of that in case No. 46.

It will be remembered that on November 26, 1900, the Commissioner of the General Land Office directed Stratford to make a thorough investigation of twenty-three of the fifty-seven entries which were questioned by the Northern Pacific Railroad Company, and that on December 24, 1900, Stratford wrote to the Commissioner recommending that twenty-nine entries other than those so questioned be suspended until they could be investigated, as the same parties were interested in them and as they were surrounded by the same suspicious circumstances as those mentioned in the letter of the Commissioner. By reference to Stratford's report (R., 360) it will be seen that among the said twenty-nine entries are the seventeen in this suit.

These seventeen entries therefore fell under the investigation which was then being conducted, and what is said in the Government's brief in case No. 46 under the above heading is equally applicable here, except, of course, as to the affidavits and the testimony of the entrymen as to the manner in which they were obtained. The affidavits will be found commencing at page 632 of the record. They are substantially alike and to the general effect that the entrymen paid Thompson or the Mealeys $40 or $50 as a location fee; that the Mealeys furnished them sufficient money to make their entries and made the loan on behalf of Kribs, who was to take a mortgage for the amount; that they afterwards sold the land to Kribs for $800 or $850, most of them giving as a reason for selling that they were too poor to keep it; that prior to final proof they made no contract or agreement, express or implied, with Kribs, Mealey, or anyone else that they would sell the land, or any part thereof, or any of the timber thereon, to anyone after they had obtained title. Asked why they made filings, affiants said they did so because they thought the land was valuable for timber. As to the manner in which the affidavits were obtained, the court's attention is invited to the following:

William W. Billings testified that on November 7, 1901, the date of his affidavit, the Mealeys directed him to go to Wodtli's house; that he found there the "officers," a stenographer, and the Mealey boys (R., 179–180); whereas his affidavit (R., 632) states that he paid Thompson a location fee of $40 or $50,

and that he sold the land to Kribs for $800—on the stand he denied any knowledge of these statements (R., 180).

John T. Parker's affidavit will be found at page 660 of the record under the name of Thomas Parker. It is dated November 11, 1901. The Mealey boys told him to go to Wodtli's house (R., 191). He went with William Mealey, and on the way to Wodtli's Mealey told him how to answer the questions (R., 192), instructing him, among other things, to say that he paid Mealey $50 for locating him, and that he had sold his cattle and horses in order to get the $400 necessary to pay the Government for the land (R., 193). On the witness stand he denied the truth of these statements and also denied that he made a statement that he had received $800 for his land (R., 194).

Cornelius N. Tuthill's affidavit is dated November 8, 1901 (R., 681). He testified that he remembers going to Wodtli's house with a crowd; he believes there were a couple of "lawyers" there from Washington (R., 219–220). They asked him some questions very rapidly and Judd Mealey said to him, "If you don't think of all of it, just let me know, and I will tell you." He answered some of the questions himself, and some were answered by Mealey (R., 224); they gave him his supper and $5, and he thinks the rest of the crowd got the same (R., 220).

J. H. Steingrandt made an affidavit, dated November 8, 1901 (R., 678). He testified that Thompson told him to go to Wodtli's house, saying a man

wanted to see him (R., 239). His affidavit contains the statement that he paid William Mealey $50 as a location fee, and that he sold the land to Kribs for $840. On the stand he denied having made these statements and that they were true (R., 241–242).

The affidavit states that he became acquainted with Kribs when he filed at Roseburg, but he testified that he never knew Kribs in his life (R., 242). His affidavit states that he made the sale of his land personally to Kribs after agreeing with him as to the price of it, but he testified that he knew nothing about such a sale. He denied that he ever borrowed $600 from Kribs or from anybody else. He also denied having received $240 from Mealey (R., 243).

Richard F. Malone's affidavit is not in the record, but he testified that he made one at Wodtli's house (R., 263). On the witness stand, on having his attention called to the statements in his affidavit that he paid Thompson $50 location fee, that he sold the land to Kribs for $850, and that Mealey delivered him the said amount of money for the deed, he denied making such statements and the truth of them. He does not know where he got the information given in the affidavit (R., 268). It was commonly understood by the entrymen that there was some trouble and that they were all to stand by the Mealeys and make a good report. One of the Mealeys answered some of the questions for him (R., 268–269).

Samuel D. Pickens made an affidavit, dated November 7, 1901 (R., 665). He testified that the

Mealeys told him to go to Wodtli's house. He denied that he paid Mealey $50 for locating him; that he sold the land to Kribs for $840; that he ever had any transaction with Kribs personally; that he borrowed $600 from him; and that he received $200 or $250 as to the difference between the price of the land and the mortgage (R., 290). He states that he "might have answered some of the questions"; that he was prepared to answer anything to help the transaction go through (R., 290–91); that it was common talk among the entrymen that they would make it as strong as possible to clear the matter up (R., 291). He does not know from what source he got the information given in his affidavit (R., 298). The affidavit was proved to be in Mealey's handwriting (R., 299).

Sydney Scanlan made an affidavit, dated November 11, 1901 (R., 673). He testified that some one told him he was wanted at Wodtli's. He went and found the Mealeys and others there (R., 312). Stratford, the special agent, told him how he should answer some of the questions, and asked the questions in such a way that the answers would be implied (R., 313). Stratford told him to say that he paid Mealey $50 as a location fee (R., 313). He does not know where he got the information contained in his affidavit that he met a gentleman on the street who asked him if he had made a timber entry and who said he would buy it for $850 (R., 314). The same as to his statement that no one furnished him money with which to pay the Govern-

ment (R., 315). His affidavit states that he took the money to Roseburg to pay for the land, but he denied doing so (R., 316). Asked as to his statement in the affidavit that $850 in cash passed to him at the time the sale was consummated, he replied that Stratford "insinuated" that (R., 317).

The testimony of these entrymen, who appear to have been poor people—small farmers, laborers, and the like—shows that they were even more ignorant of what was going on than the entrymen involved in case No. 46. It is evident that Kribs, the Mealeys, Thompson, and Stratford were working together just as Kribs, Smith, Puter, and McKinley worked together in case No. 46. The brief in the latter case shows how these affidavits, all of which make out perfectly legal entries under the statute, resulted in the issuance of patents.

It appears that John Van Zante, a Portland lawyer, was requested by the law firm of Mitchell & Tanner to go out to Wodtli's house and attend the taking of the affidavits. This firm was employed by Kribs to secure patents in both cases (R., case No. 46, p. 673). Van Zante testifies that he was employed by Kribs; but it appears that he turned copies of the affidavits over to Mitchell & Tanner and received his compensation from them. Numerous changes in the affidavits are in the handwriting of Van Zante, yet he does not remember how the changes came to be made, except in one instance, in which he said it was made at the suggestion of the entryman. The Mealey boys were busy in the room and in the

yard where the entrymen were gathered. Van Zante testifies that no assistance was given to the entrymen in the room, but does not know what happened outside (R., 552–566). He evidently knew very little regarding public-land entries, as is shown by the following question and answer:

> Q. Didn't it occur to you in that examination that these parties didn't know to whom they had deeded the land at all, and that they didn't know to whom they had mortgaged the land at all, and some of them didn't know that they had mortgaged it at all?
>
> A. If I was going through an examination of that kind now *I would see things in it that I didn't at that time,* and I remember Mr. Stratford saying the evening or the morning before there was an examination—he said: "These fellows have gone through this three times," I think he said, "and they know about what I am going to ask." But to me it didn't occur that it was a farce, if it was a farce (R., 562).

As a matter of fact, that was the first time the Government had called upon these entrymen to make a statement except that necessary in their entry papers.

If these seventeen entries were honest, Kribs might easily have relied upon the Government to protect them. Instead of that he went post-haste to Mitchell & Tanner and made known the fact of the investigation. If Stratford had been faithful to his trust, he would have conducted the examination of the

entrymen in private, free from the influence of the conspirators. Instead of so doing, he surrounded himself with Thompson and the Mealeys, all three of whom were charged with a part in the conspiracy, and Kribs's lawyer, and permitted them to assist in taking the affidavits and allowed the statements to be put in the mouths of the witnesses. The whole proceeding was a fraud on the Government. The statement of Van Zante that the witnesses were not prompted in the room is in conflict with the testimony of the entrymen Tuthill (R., 220), Malone (R., 269), and Scanlan (R., 313).

Referring to Stratford's report (R., 647–649), which seems to bear no date, but was evidently made immediately after taking the affidavits in November, 1901, it is true that he recommended that the entries be held for cancellation, but in his report of March 9, 1901 (R., 369), he had stated that he had been unable to find any tangible evidence of fraud, and recommended that the entries be passed to patent. April 15, 1901, the Commissioner wrote to Stratford (R., 373), stating that he was not willing to pass the entries to patent as matters then stood, and criticizing the investigation and the report of Stratford for its lack of thoroughness. Stratford then took the affidavits (in November, 1901), and it is evident that the Commissioner's reprimand had the effect of causing him to reverse his recommendation.

But he was in the employ of Smith, and it was necessary that the affidavits, the contents of which were of course known to Van Zante, the Mealeys, and

Thompson, should make a good showing in favor of the validity of the entries. The conclusion is irresistible that Stratford, when taken to task by the Commissioner, was forced to become false to both the Government and Smith; he therefore made up affidavits, showing perfectly legal entries, or nearly so, and then deceived Smith by recommending cancellation. The affidavits in case No. 46 had been taken in July, 1901. Stratford had probably received all of his pay from Smith when he completed the affidavits in case No. 159, so he thought that an opportune time to withdraw from the situation. Accordingly, on December 28, 1901, he asked for a transfer (R., 378), and on February 10, 1902, the Commissioner wrote him (R., 381) to complete his reports on all cases which he had examined and his request would then be considered. There is nothing in the record showing what further, if anything, Stratford did in connection with the entries in this case. At all events, the fraudulent affidavits on their face warranted the issuance of patents and the Interior Department acted accordingly.

Afterwards, in January, 1905, the real situation was told to Heney and Burns, probably by Puter, who had told them of the fraud in case No. 46. However, the entrymen were subpœnaed to appear before the grand jury at Portland. (See testimony of the several entrymen.) They so appeared and while there were interviewed by Heney and Burns, and then, and not until then, did the truth begin to be revealed.

THE FACTS CONSTITUTING THE ORIGINAL FRAUD.

The following facts are plain: That Smith furnished all money necessary to obtain the land, including all incidental expenses; that Kribs was acting as Smith's agent for a compensation of 27½ cents per acre (R., 400–402, 581); that Kribs paid to the Mealey brothers $5.25 per acre for the entries of Judd Mealey, Thompson, and Steingrandt (R., 571–572); and that for the balance of the entries he paid to the Mealeys and Thompson $4.75 per acre (R., 574); that Thompson and the Mealeys received the difference between $4.75 per acre and the cost of the land and expenses, less the $50 paid to the entrymen; that fifteen entrymen got $50 each; and that Smith got the land.

It appears from the testimony of the entrymen that in every instance, except in the case of Tuthill, whom one of the Mealeys approached (R., 216), they heard they could make $50 through the Mealeys by making a timber filing, and in every instance they were told by the Mealeys or Thompson that it was uncertain whether claims could be secured for them or not, but that in every instance the Mealeys or Thompson returned in a short time with the news that a claim had been located. As in case No. 46, every possible precaution was taken to negative the idea of a prior agreement. It is nevertheless true that in every instance the entryman was told by the Mealeys or Thompson that they would furnish the money to pay the Government and all incidental

expenses; that they were conducted to the land office by the Mealeys or Thompson to make their filing and final proofs; and that on the date of the latter, or within a few days, acting under the direction of the Mealeys, they made deeds to Kribs. The testimony of the entrymen shows that they were wholly ignorant of what was going on except that they were to receive $50 in cash and not be put to expense.

What actually took place prior to the time the entrymen went to the Mealeys or to Thompson for the purpose of filing is not definitely known. In this, as in most cases of conspiracy, the combination can only be proved by the subsequent acts of the parties. The defendants could easily have called the Mealey brothers and Thompson to explain how they made it known to the residents of Sweet Home and Foster (the two places are seven miles apart) that anyone who might come to them would receive $50 for his timber right, but this was not done.

The testimony of the entryman Billings shows that he was an old man and very poor. Hearing that there was $50 in it he thought it would help out his family. At the land office a man read something over to him so rapidly that he did not get one word. He does not know who made his final proof, to whom he made a mortgage, or to whom the land was deeded (R., 166–177).

The entryman Parker was told by some one that if he wanted a timber claim he should see the Mealey boys, which he did. He does not know who paid his

expenses, or who published notice of final proof. After making proof he, together with a lot of others, went into a little room in the land office building, where William Mealey and another man had them make deeds, and each received $50 (R., 183–191).

The entryman Lawrence testified that everyone was taking timber claims, so he saw Thompson and got one. After he filed he went across the street and signed "some mortgages or something"—he did not know what it was he did sign. After final proof he signed a deed, but does not know to whom he sold and did not care. He simply followed the others who were with him at the time, and they all did what William Mealey told them to do (R., 199–205).

The entryman Tuthill was interested in the matter, and Judd Mealey came to him and wanted to know if he would take up a claim. Mealey told him he would furnish all expense money. Tuthill did not understand it, but, nevertheless, made a filing. When he made final proof, he signed some papers for Mealey, which he asked to be permitted to read over, but a large man (who is not identified) took the paper away from him, and Judd Mealey told him it was all right (R., 215–219).

The entryman Steingrandt heard that people were taking up claims through the Mealeys, so he went to them and was told he would receive $50. He filed with a lot of others, and, after final proof, made a deed and received the money (R., 230–237). He states that when he signed the mortgage for $600 he had no idea that he could ever pay it

off (R., 252). He understood before he filed that he was to get $50 and turn over the land as directed by the Mealeys (R., 252–253).

The entryman Malone talked with the Mealeys about taking up a claim, with the same result as in the other cases. The Mealeys notified him when it was time to prove up. Like all the others, he made no inquiry as to how much his expenses were. He does not know to whom the mortgage was made. He received $50 when he signed a deed. This entryman had no understanding of the transaction at all and, therefore, could not state whether he made any agreement before filing (R., 254–275).

The entryman Pickens told the Mealeys he wanted a claim; they told him they would furnish all expenses, but he did not know at the time what he was going to get out of it. He made a mortgage, but does not know to whom. He does not know how much his expenses were and made no inquiry about them. He did nothing in regard to the claim except as directed by the Mealeys (R., 277–287).

The entryman Scanlan heard through the people in the neighborhood that the Mealeys would pay $50 for a timber claim. He saw one of them and was taken to the land office. Immediately after he made final proof, one of the Mealeys told him that there was a man there who would buy his claim. He, together with a lot of others, went to a lawyer's office and signed mortgages and deeds. He understood that he could pay off the mortgage and hold

the land indefinitely (R., 302–309). In view of the fact that this man was a common laborer, this privilege was probably of little value to him.

It is possibly true that the entrymen were first moved to take up claims by the current report that they could make $50. In case No. 46 most of them were approached by one of the conspirators. This mere difference in the manner in which the parties came together is immaterial.

Kribs and Smith were evidently well pleased with the deal they had made through Puter and McKinley, so they started out to get more land. It will be remembered that in case No. 46 the final proofs had been made in April and May, 1900; the last, May 16. What occurred between Kribs and the Mealeys and Thompson is wholly a matter of deduction, except so far as the testimony of Kribs is concerned, and that, in both cases, is characterized by inconsistency to say the least.

According to his statements (R., 568), he saw the Mealeys a short time prior to the final proof of Judd Mealey and Thompson, which was August 16, 1900. Judd Mealey asked him to advance the money with which to make the final proofs on these two claims and that of William Mealey and one other (R., 568). Kribs then suggested that he would like to buy their claims, and he purchased them then and there for $5.25 per acre (R., 571–572). Kribs swears that prior to that time, approximately August 16, 1900, he had no knowledge that these four filings had been made (R.,

572), yet when Smith went to Oregon on May 21, 1900 (R., 824–825), he, together with Puter and Kribs, stayed at William Mealey's place, and they all, including Mealey, made a trip out to the timber (R., 850). Smith was buying timberland; that was the only purpose of his visit to that neighborhood. It is not at all likely that the Mealeys did not make it known to Smith and Kribs that they and Thompson had made timber entries six days before.

When asked on the stand about the remaining fourteen entries in this suit, Kribs said that about the time the final proof was made on the entries of the Mealeys and Thompson, August 16, 1900, the Mealeys told him that they were going to locate a lot of their friends in the Sweet Home country, and asked him if he would advance the money. He told them he would do so, would take a mortgage, and would buy the land if it was good (R., 573). The appendix to this brief will show that at that time, August 16, 1900, filings had been made on every one of the seventeen entries involved in this suit. Omitting the entries of Thompson and Mealey, the earliest was June 14, so that this conversation must have been prior to that date.

Another instance in which Kribs swore falsely is shown by the fact that on the stand he said that the entrymen who deeded to him were all strangers to him and that he had never met them nor had any conversation or dealings with them (R., 577). Yet in his affidavit made before Stratford on March

20, 1902, he swore that some of the entrymen spoke to him with reference to loans wherewith to make their entries and that he referred them to Mealey (R., 388).

Smith and Kribs both claim to have no knowledge of the circumstances under which these entries were made, yet it is conceded that he and Smith visited the timber before Kribs made any contract for the purchase of the lands and that in so purchasing he acted on Smith's direction (R., 585). At least they knew that it was government land, and Kribs's negotiation with the Mealeys to buy the land, taken in conjunction with the offer of the Mealeys to pay $50 an entry (it is immaterial how that offer reached the ears of the prospective entrymen), clearly constitutes a prior agreement on the part of the entrymen with the Mealeys to deed their lands to Smith or to some one for his use.

All of the filings except two were made in June and July, 1900, and nine of the final proofs were made in August, 1900. Smith admitted on the witness stand that he was in Roseburg two or three times during the summer of 1900 for the purpose of "looking after his interests in the acquisition of Oregon lands" and "went over matters thoroughly with Mr. Kribs * * * as to what he was doing and how he was getting along" (R., 854–855), yet he swore he did not know from whom Kribs was purchasing the lands or anything about the titles.

Kribs admits that no locations were made in any of the entries except those of Judd Mealey and

Thompson until after he and Smith had been out to see the timber and Smith had approved of it (R., 585). He had the effrontery to say that his knowledge of the fact that these entrymen were making deeds just as quickly as they proved up and that the Mealeys and Thompson had located and escorted them to and from the land office, aroused absolutely no suspicion in his mind that there was a prior agreement (R., 598). Nevertheless, he had his lawyer, Mr. Shupe, at Roseburg at the time of final proof, ready to draw the deeds whenever Mealey brought in a man to sign (R., 600). That Smith was in close touch with this deal is shown by the admission of Kribs that he made reports to Smith from time to time the same as in case No. 46 (R., 600–607).

The court will remember that from the time the entries in both suits were first questioned Smith and his attorneys were active in inducing the Interior Department to issue patents.

THE ENTRIES WERE IN VIOLATION OF THE TIMBER AND STONE ACT.

The discussion under this head in appellee's brief in case No. 46 fully covers this case. The facts surrounding some of the filings in case No. 46 are substantially the same as those in this case, in that the entrymen heard it reported that they could get $75 or $100 for their timber rights upon application to McKinley.

This case is clearly distinguishable from *United States* v. *Budd* on the following grounds: First, in the suit

against Budd there was but one entry, while here is a scheme to secure a large body of timberland which had its inception before any one of the entrymen thought of making a filing. Second, in the Budd case neither Montgomery nor anyone acting in his behalf came in contact with Budd until after the entry had been completed, while here the entrymen all made arrangements with the Mealeys, prior to filing, to sell their land for $50 net, the Mealeys having contracted with Kribs to get the land. Third, it does not appear that anyone but Budd furnished the money for the price of the land and incidental expenses, while here it was all paid by Smith through Kribs. Fourth, Budd made his entry himself, with a full understanding of every step he took in the proceeding, while here not a step was taken by an entryman which was not directed by the persons who had undertaken to get the land. Fifth, in the Budd case there was no offer of any specific sum of money as the price of the land, while here the entrymen were told in advance that they were to receive $50 for their right.

The facts here bring the case clearly within the inhibition against prior agreement. The least that can be said of the transaction is that the entrymen took up the land upon pure speculation. If the doctrine of the Budd case applies here, it is submitted that that case should be modified or reversed. As said in the *Budd* case (dissenting opinion), 144 U. S., 154, 172:

> The evidence in this case tends to show that defendant Montgomery had, by this and

other devices, appropriated to himself over ten thousand acres of land in and about this neighborhood. It is unnecessary to say that, however this may have been done, it is a practical defeat of the intention of Congress. It certainly demands, and in this instance seems to have received, a searching investigation. When we see the most valuable portion of an immense domain, which has been reserved by the beneficence of Congress for the benefit of actual settlers or of small proprietors, being gradually absorbed by a few speculators, we are forced to inquire whether there is not a limit beyond which even a land patent of the United States begins to lose something of its sanctity.

SMITH WAS NOT A BONA FIDE PURCHASER.

If Smith had no personal knowledge of the fraud or of facts sufficient to put him upon inquiry, he was bound by the knowledge of Kribs. The discussion in the brief in No. 46 on this point, applies to this case.

THE LINN AND LANE TIMBER COMPANY WAS NOT A BONA FIDE PURCHASER.

Reference is made to appellee's brief in case No. 46 under this head. In this case the entrymen deeded to Kribs, who conveyed a one-fourth undivided interest to Swanson on December 28, 1904, and a three-fourths undivided interest to Smith on October 24, 1904. By the same deed by which Smith and wife conveyed the lands in case No. 46 to the company on June 4, 1906, they conveyed the lands in this

suit. Swanson and wife conveyed to the company on May 28, 1907. This latter deed, like the one from Smith and wife, was kept from the record until after six years from the date the patents had expired. In other words, the company played exactly the same part in this case as it did in No. 46.

THE STATUTE OF LIMITATIONS.

For a full discussion under this head the court is respectfully referred to appellee's brief in case No. 46.

If the court shall find that the statute was arrested until the discovery of the original fraud in January, 1905, or until the discovery on September 9, 1908, when the deeds were recorded, of the superimposed fraud on the part of Smith and the company, it will be unnecessary for it to consider the contention in appellants' brief, page 38, that as the warning order was not served on Smith and Swanson until August 11, 1908, the suit as to the patents issued July 9, 1902, is barred by limitation.

The trial court held that the suit as to those patents was barred on that account. The Circuit Court of Appeals held that the statute was arrested as suggested in the preceding paragraph and therefore found it unnecessary either to affirm or reverse the trial court as to the time of service with relation to the statute of limitations.

The bill was filed May 25, 1908 (R., 29). It did not show the residence of any of the defendants. On that date a subpœna *ad respondendum* was issued directed to all defendants, returnable July 6, 1908

(R., 30–31). This writ was returned July 20, 1908, as to the defendants Smith, Swanson and Gould *non est inventus* (R., 29). On the day the return was made the United States Attorney filed a motion, and an affidavit in support thereof, for a warning order under section 738, R. S., as amended March 3, 1875, 18 Stats., 472, sec. 8 (R., 33–37). Such an order was issued July 27, 1908 (R., 38–40), commanding Smith, Swanson and Gould to appear, plead to, answer or demur to the bill within sixty days from the time of service upon them. The return of this writ shows that it was served on Smith and Swanson at Minneapolis, by the marshal of that district, on August 11, 1908 (R., 37–38). It is claimed by appellants that as to the patents dated July 9, 1902, this service was not effective to preclude the defense of limitation because it was not actually made on the defendants Smith and Swanson until after six years from the date of the issuance of said patents had elapsed.

It is true the bill does not state the abode or citizenship of the defendants. This was merely a defect in the form of the bill; at all events, it was waived by pleading over. The procedure followed in this case was correct, for if the bill does not show the non-residence of the defendant who is to be served with the warning order, a subpœna *ad respondendum* should first be issued as a foundation for the former Simkins Fed. Eq. Suit (2d ed.), 336. And Judge Dillon held in *Bronson* v. *Keokuk*, 2 Dill., 498, Fed.

Cas. 1928, that even if the bill shows the residence of the defendants, the proper practice is to let the subpœna *ad respondendum* issue against all defendants and if the writ is returned *non est inventus* as to any of them, the court may then issue the warning order provided by section 738, R. S. This is sound procedure because that section declares that such an order may be issued if one or more of the defendants shall not be an inhabitant of nor "*found*" within the said district.

It is true that Judge Morrow in *United States* v. *American Lumber Co.*, 80 Fed., 309, distinguished between cases in which the bill shows the nonresidence of the defendants and those in which it does not and held that only in the latter event is it proper to issue the subpœna *ad respondendum* as a foundation for the warning order. Referring to *Bronson* v. *Keokuk*, Judge Morrow said:

> But it does not appear, from the report of that case, that the bill alleged affirmatively that the defendants were nonresidents of the district in which the suit was brought, as is distinctly averred in the bill in the present suit. I consider this as an important distinguishing feature between the two cases, and one which will go far toward settling and regulating the practice to be pursued in obtaining extraterritorial service upon absent or nonresident defendants in the class of cases covered by the act of March 3, 1875. * * * Where, however, the bill does not disclose the general fact of absence or nonresidence, then

> the better practice, as suggested by Judge Dillon in *Bronson* v. *Keokuk*, *supra*, would seem to be to cause the subpœna to issue as of course, so that the court and the party complainant may be advised, from the return thereto, whether or not the defendant has been found within, or is absent from, the district.

So far, then, the procedure followed here was correct.

The general rule in Federal equity courts as to the duty resting upon the complainant in order to avoid the plea of limitation is that he must file his bill within the period of limitation, take out the subpœna without delay and see that a *bona fide* attempt is made to serve it. After service is made he must diligently bring his suit to a hearing. If these acts are performed, the complainant is clear of the bar of limitation; Angell on Limitations (6th ed.), §346; *United States* v. *American Lumber Co.*, 80 Fed., 309, 317; 85 Fed., 827, 830.

On May 25, 1908, when the bill was filed, Smith was reported to be in the city of Portland, Oregon, lodging at Kribs's house. The marshal swore that Puter so notified him and that he sent a deputy there who asked for Smith, and also went to Kribs's office and made the same inquiry, and that the deputy was told in every instance that Smith was not there. Later, Smith was reported to be up around Sweet Home and had been seen at Brownsville. The marshal sent a deputy to both places. The deputy made a careful search without finding him (R., 629).

The subpœna was issued on the very day the bill was filed. It is true that while it was returnable July 6, 1908, the marshal did not make his return until July 20. It is claimed by the appellants that because the writ was not returned on July 6 it became *functus officio* after that date and that, therefore, there was no subsisting service upon which the warning order issued July 27 could be based. Waiving for the moment the fact that this rule of continuity of service does not apply to suits in equity nor to any case in which service is made at the same term, it is submitted that the failure of the marshal to make the return on July 6 should not prejudice complainant. Surely the rule of "timely proceedings" referred to in the American Lumber Company case does not require the complainant, at his peril, to see that the marshal makes a return on the day named in the subpœna and to get his application for substituted service on that day. Otherwise, it becomes the duty of all parties plaintiff to inquire of the marshal on return days whether the return is to be made.

It is interesting to note that in another case in the Federal court—*United States* v. *Miller*, 164 Fed., 444—this very question arose as to service on Kribs, who is a defendant in the case at bar. That was a suit to cancel a fraudulent land patent. The bill was filed and subpœna issued March 22, 1907. The subpœna was returnable May 6, 1907; neither service nor return was made within that time (the date of the return does not appear); an *alias* subpœna issued July 16, 1907, and service was made on July 31,

1907. The patent was dated May 8, 1901. Judge Wolverton held the plea of limitation insufficient. Speaking of service, the court said:

> It is sufficient if the officer in good faith, or with a real purpose to serve, made reasonable effort to accomplish his purpose. The evidence shows to my mind that he did this. *There was some delay in making the return and issuing the alias subpœnas, but not unreasonable or unwarranted.* There was manifestly a direct and continuing purpose all the while to accomplish the service, and the diligence displayed looking to that end must be considered to have been reasonable diligence.

The complainant here issued the subpœna on the very day the bill was filed, and on the very day on which the writ was returned, the United States Attorney made his motion for substituted service.

The contention of the appellants that there was no valid process in effect on July 27, 1907, which could form a foundation for the warning order is wholly without merit. The cases cited by them to the effect that there must be continuity of service are distinguishable from the case at bar on two vital grounds. First, those cases turn upon the fact that the *alias* writ was not taken out during the same term as the original writ and that, therefore, the *alias* was not connected with the original process. In the case at bar, the record will show that this process was all issued during the regular April, 1908, term.

Secondly, and of more importance, is the fact that this rule of continuity of service does not apply to suits in equity at all: It had its origin in and applied only to actions at law, and its reason is ably discussed at length by Mr. Angell in his work on Limitations (6th ed.), § 318. The common-law writs preceded the declaration, and as the writs of *latitat* and *clausum fregit* supported any personal action subsequently shown by the declaration, it was necessary, in order to show that the declaration was based upon a particular writ, to connect it therewith by proper continuance from term to term, otherwise a plaintiff, after a long period of time, might declare upon a cause of action different from the one he had in mind at the time of suing out the writ. To make a complete connection between the writ and the declaration, it was necessary that the writ should be returned and the alias writ regularly based upon the return. Mr. Angell, in the same section, states that where the writ is of such a nature as to correspond with the declaration, continuances are not necessary in order to avoid the bar of the statute, citing the practice in Pennsylvania, where the writ always specifies the nature of the action to be declared upon.

Manifestly, these reasons can not apply to suits in equity, in which the bill is the very foundation of the proceedings and in which the process is based upon the bill. It is a significant fact that all of the cases cited by appellants on page 41 of their brief, to the effect that the *alias* service must be issued while the original is still in force, were actions at law.

IF THE COMPANY WAS NOT SEASONABLY IMPLEADED, IT WAS BECAUSE OF ITS FAILURE TO RECORD ITS DEEDS PROMPTLY, AND IT IS THEREFORE IN THE SITUATION OF ONE PURCHASING PENDENTE LITE, EVEN THOUGH IT PURCHASED BEFORE THE BILL WAS FILED.

Reference is made to appellee's brief in case No. 46.

The conclusion of the Secretary of the Interior that the patents should be issued is not a bar to this suit.

Reference is made to appellee's brief in case No. 46 under this head.

It is respectfully submitted that the decision of the Circuit Court of Appeals should be affirmed.

ERNEST KNAEBEL,
Assistant Attorney General.

HENRY C. LEWIS,
Special Assistant to the Attorney General.

JANUARY, 1915.

APPENDIX.

Name of entryman.	Application.	Final proof.	Mortgage to Kribs.	Deed to Kribs.
O. Judd Mealey	May 15, 1900	Aug. 16, 1900	None	Aug. 18, 1900
John A. Thompson	do	do	do	Do.
Wm. W. Billings	June 14, 1900	Aug. 27, 1900	Aug. 27, 1900	Sept. 1, 1900
Chas. Wiley	do	do	None	Aug. 27, 1900
Samuel D. Pickens	do	do	Aug. 27, 1900	Sept. 1, 1900
John T. Parker	do	do	None	Aug. 27, 1900
Jos. O. Mickalson	do	do	Aug. 27, 1900	Aug. 28, 1900
Jos. Steingrandt	do	do	do	Sept. 1, 1900
Alex. Gould	July 12, 1900	Oct. 9, 1900	None	Oct. 11, 1900
Syd. H. Scanland	do	do	do	Oct. 10, 1900
Rich. F. Malone	do	do	do	Oct. 12, 1900
Jno. J. Guilliland	do	do	do	Oct. 11, 1900
Louis P. Maynard	do	do	do	Do.
Wm. J. Lawrence	do	do	do	Oct. 15, 1900
R. C. Watkinds	do	do	do	Oct. 18, 1900
Jas. W. Rozell	July 13, 1900	do	do	Oct. 9, 1900
Corn. N. Tuthill	July 19, 1900	do	do	Do.

N. B.—"None" signifies that no mortgage was found of record.

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Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 1086.

THE LINN & LANE TIMBER COMPANY AND CHARLES A. SMITH, *Appellants,*

vs.

THE UNITED STATES OF AMERICA, *Appellee.*

STATEMENT OF THE CASE.

(References to pages of Printed Record).

This case and No. 750 on the October Term 1912 Calendar were argued and decided together in the United States Circuit Court of Appeals for the Ninth Circuit. In the opinion of that court (196 Fed. 593) this case is designated as No. 1972, the other as No. 1973. For convenience these numbers will be used in this brief to distinguish the cases, as both have the same title in this court.

This suit was brought to cancel eighteen patents under the Timber and Stone Act (20 St. 89), but was dismissed by the district attorney as to one of the patents (32-33) and brought to trial as to the remaining seventeen, of which eight were issued July 9th, and nine August 12th, 1902.

The original bill was filed May 25th, 1908, and it made the patentees and Charles A. Smith, Frederick A. Kribs, Charles J. Swanson and one William Mealey parties (8-29). It charged conspiracy on the part of William Mealey and two of the entrymen (O. Judd Mealey and John A. Thompson), and Smith, Kribs and Swanson to enter the lands covered by the patents in violation of Sec. 2 of the Timber and Stone Act, and averred that, pursuant to such conspiracy, fifteen of the entrymen, before filing, had agreed with O. Judd and William Mealey and John A. Thompson to convey the lands to Kribs, Smith and Swanson, and that O. Judd Mealey and Thompson, as respects their own entries, had made a similar agreement with Smith, Kribs and Swanson (18-19). The bill also averred that in accordance with these agreements all the entrymen had conveyed the lands to Kribs by warranty deeds before the patents were issued and that Kribs had thereafter conveyed an undivided three-fourths interest to Smith on October 24th and an undivided one-fourth interest to Swanson on December 28th, 1904 (24-26).

The district attorney knew before the bill was filed that Smith was a resident and citizen of Minneapolis, Minnesota, but this was not set out in the bill as required by Equity Rule 20 (9), nor was any *praecipe* for process filed (926). At the district attorney's oral direction (926) the writ of *subpoena ad respondendum* was issued and delivered to the marshal for the Oregon District May 25th, 1908, as the process against Smith (29-32). The marshal

was called as a witness and testified:

"I was told in my office—Mr. Puter came to my office and notified me Mr. Kribs was in town—or Mr. Smith was in town—was staying at Mr. Kribs' house. Mr. Puter was very anxious that Mr. Smith should be served and I sent men to Mr. Smith's house about that—Mr. Kribs' house about that time. They called there and asked for Mr. Smith, and also went to Mr. Kribs' office, and were told in every case that Mr. Smith was not here, although Mr. Puter said he saw him here in town with Kribs and I made no service at that time. We didn't succeed in finding Mr. Smith. Then later Mr. Smith was reported to be up in the 11-17 country, around Sweet Home; had been seen at Brownsville, and I had a man go up there and make a careful search and he couldn't find him, didn't find him" (629).

No evidence was introduced to show that Smith or Swanson was in fact within the District of Oregon. The marshal's return on the subpoena said, "that on the 25th day of May, 1908, I received the within writ and that after diligent search and inquiry from F. A. Kribs and S. A. D. Puter, I am unable to find the within named defendants, C. A. Smith, Chas. J. Swenson * * * within my district" (29). The subpoena was returnable July 6th and was served on Kribs May 30th, 1908 (30-1). On July 20th the district attorney filed an affidavit stating that defendants, "C. A. Smith and Charles J. Swenson * * * are not inhabitants or residents of the State of Oregon and that none of them can be found in said State or district" (34). On this affidavit the court on July 27th, 1908, issued as process against Smith and Swanson the warning order for which provis-

ion is made by the Act of March 3, 1875, section 8 (18 Stat. 470). This was served on Smith and Swanson at Minneapolis, Minnesota, August 11th, 1908 (37-40).

Kribs, William Mealey and some of the entrymen filed a plea to the bill on September 5th (40-45) and Smith and Swanson filed a plea on October 8th, 1908 (46-51). These pleas were to the effect that the Linn and Lane Timber Company was the owner of the land and a necessary and indispensible party. The Government did not take issue on the pleas or set them for argument, but took *ex parte* orders permitting it to file an amended bill, and pursuant to these orders it filed such an amended bill on November 16th, 1908, making the Company a party defendant (53-80). Proper process was issued against the Company on the same day and was served November 18th, 1908 (80-84).

Smith, Swanson and Kribs filed a joint answer and the Timber Company a separate answer on January 29th, 1909 (86-121). In both answers the averments of conspiracy and fraud were put in issue. Both answers also set up as defenses that Kribs was an innocent purchaser from the entrymen, that Smith was an innocent purchaser from Kribs (93-4, 111-12) and that the Timber Company had acquired the title to the lands as an innocent purchaser from Smith by a deed from him dated June 4th and delivered June 9th, 1906, and by deed from Swanson dated and delivered May 28th, 1907 (93, 99, 111, 217). In Smith's and Swanson's answer the Act of March 3, 1891 (26 Stat. 1093), was

pleaded in bar as to the patents of July 9th (102) and in the Company's answer the Act was pleaded in bar to the entire suit (104-5). Replications were filed July 30th, 1909 (121-3), and the case was set for hearing April 18th, 1910 (124). At the opening of the hearing the Government asked leave to amend the bill by alleging that the value of the land at the time of the issuance of the patents was $136,000 and at the time of the trial $244,000, this with a view of a recovery against the entrymen and the other defendants of a money judgment if the patents could not be set aside (124-130). The amendment was allowed provisionally over defendants' objections (901). Answer to the amendment was filed by the Company, Smith, Swanson and Kribs (130-2), and the trial of the case proceeded, part of the testimony being taken in open court and part by a special examiner.

Eight of the seventeen entrymen were examined as witnesses for the Government, namely Billings (165-182), Parker (183-198), Lawrence (199-215), Tuthill (215-229), Steingrandt (229-254), Malone (254-275), Pickens (275-301) and Scanland (301-330). Wodtli, the entryman as to whom the bill was dismissed, was also examined (161-165, 622-625). Their testimony was in substantial accord, and to the following effect:

William Mealey, O. Judd Mealey and John A. Thompson were old residents at Sweet Home and Foster, places within a few miles of the timber lands in question; they owned hill ranches and were men of good reputation (163-4, 578). They were

old neighbors of the other entrymen. Billings had lived there about twenty years (165-6); Tuthill twenty-five years (215); Steingrandt twenty-five years (229); Malone was born there (254); the rest had lived in the neighborhood and had been well acquainted with the Mealeys and Thompson for somewhat shorter periods. O. Judd Mealey and Thompson each filed on a quarter section on May 15th, 1900 (147-8). Good many people were taking timber claims in the locality at this time and the two Mealeys and Thompson were locating persons in their neighborhood. It was currently reported that those who took up timber claims could get from $50 to $100 out of a claim (174, 303). Prompted by a desire to avail themselves of their rights under the Timber and Stone Act before the land was all taken, and also prompted by the report as to what could be realized on claims, seven of the eight entrymen who testified went, some to Thompson, others to one or the other of the Mealeys, and asked to be located (Billings, 168; Parker, 184; Lawrence, 200; Steingrandt, 247; Malone, 255; Pickens, 276; Scanland, 303). Tuthill was the only one to whom the taking of a claim was suggested by the locators (216). The result of the applications for a location was that the applicants were taken on the land and thereafter to the land office to file, and in due time to make final proof, the locators paying all the expenses of both journeys, the government price, and whatever other expenses were connected with the entries. The eight entrymen deny that there was any agreement before

filing that they were to file for the benefit of anybody else. Billings says:

"We had no conversation about it whatever (169) * * * I never heard Mr. Mealeys or Mr. Thompson say that they would give me $50 if I would enter the land. It was just merely understood by all the men up the country that there was $50 in it if we took land (174) * * * It was generally spoken of among the people there, I could not tell you where I first heard it (181). Q. What was that that was generally spoken of among the people? A. Well, if we would take land that we could receive $50 for it; if we would take this land and deed it over, we would receive $50 for it. If we didn't take it it lay there intact and nobody got anything for it in the country of the poorer class" (181).

Parker says, referring to the time when final proofs were made, that up to that time not a word had been said to him "about selling or about a deed" (197). Tuthill testifies to the same effect (221). Lawrence being asked how much he understood he was to get for the land when he made the entry said, "I didn't know. There never was no understanding" (202). Steingrandt also denies making any agreement before filing (247) but admits that before he filed he expected to sell (252). Malone before filing supposed that he could get $50 for the claim from what was talked around town (259-60) but denies making any agreement or bargain before he proved up (274). Pickens says nothing was said to induce him to file (277); did not know what he would get out of it, but admits, "I took my claim to sell it" (278). Scanland says, "We had the privilege of holding the land

if we wanted to—giving mortgage and holding it. If we could raise the money to pay the mortgage we could hold the land indefinitely" (306).

Kribs had come from the East to purchase timber lands for himself and others (580, 584) and had an understanding with Smith before leaving the East that when he found opportunities to purchase and presented them to Smith, the latter, if he availed himself thereof, was to pay Kribs by the acre for his services (581, 584, 585). The exact sum to be paid was not fixed until December 1st, 1901, when they had a settlement for what was purchased up to that time. They then agreed on 27½ cents per acre for what was then acquired and fifty cents per acre for what should be purchased thereafter (400-402, 581). Under this arrangement Smith remitted money to Kribs from time to time, charging it to him (583) and Kribs deposited the remittances in bank to his own credit (700-716).

Smith came personally to Oregon on May 21st, 1900, and went to see the timber lands where the entries here in controversy are located in connection with the purchases from Puter involved in case No. 1973 (824-25). He was accompanied by Puter and Kribs. They lodged at the place of one of the Mealey's, who went with them into the timber (850). But Smith did not personally have any dealing with the Mealey brothers or with Thompson or with any of the entrymen on this occasion or at any other time (830).

O. Judd Mealey and John A. Thompson filed May 15th, six of the other entrymen June 14th,

seven July 12th, one July 13th and one July 19th. The first two (and William R. Mealey and Antonio Steingrandt who had filed May 22nd (154) and whose entries are not involved in the suit) proved up on August 16th; the rest respectively on August 27th, October 9th and October 17th (147-55). Shortly before O. Judd Mealey, John A. Thompson, William R. Mealey and Antonio Steingrandt were to prove up—that is to say—shortly before August 16th, O. Judd Mealey called on Kribs and wanted to borrow the money required to make the proofs (568). Kribs says, "I told him that I would loan him the money. And I told him besides that 'when you make your proof, instead of making a loan I would a great deal rather buy your land than have a mortgage proposition' (568-9). This had reference to the four claims" (570). He says, "I practically purchased the claims from them at that time" (571). * * * He paid for these four claims at the rate of from $5 to $5.50 per acre (571). He says, "Well, about all there was to it, they had filed on these lands, and shortly before proof, they came down to see me, and I said I would furnish the money and just whenever their proofs were completed they had the privilege of giving a mortgage or they could sell out if they wanted to. And I made a bargain and gave them $5.25 for their lands, and got title as soon as I could" (571-2). He says he had no previous talk with any of them about the claims and bought in good faith (572-3).

As to the other fifteen claims Kribs says:

"About the time that this proof was made of these

four pieces that we just mentioned—two Mealeys, Thompson, Steingrandt—I had a talk with O. J. Mealey, possibly William R. Mealey was there—I am not so sure—that they were going in there and going to locate a lot of their friends in the Sweet Home country on lands. They thought that they could get money at either Brownsville or Albany; in case that they wanted to get money, would I advance it. I told them if these people took good lands that were not burned, good virgin timber, that I would advance money; that I would take a mortgage on the lands, whenever they had anything for sale, if it was good stuff, I would be very glad to buy it, and made it good and plain. That was not a great while as I recollect, after the first transaction. I think it was about that time" (573).

Referring to the claims which were proved up on August 27th he says:

"I talked with them about this land after their proofs were made, or about that time—said it was not as good land as the other, and I told them that I would give them $4.75 an acre for that (574). Well, about the time of proof, or shortly thereafter, at the time they proved up, I always took a note and mortgage or both, as my own protection, and I know the lands. Shortly after that they all deeded their lands (574) * * * I think some of them sold the same day, and some very shortly thereafter—sold the lands (575) * * * The deeds were either brought to me or sent to me either by O. J. Mealey, W. R. Mealey or possibly Thompson. That I cannot tell. It is one or the other of them. The three of them were working and locating and such a price as I made, whenever these lands were ready for sale, I says, 'I will pay so much for them' whenever the deeds were presented" (576).

The entrymen who testified all agree that they did not come in contact with Kribs prior to the time of

final proofs. Kribs testified to the same effect (577-79). The deeds from the fifteen entrymen were executed on various dates between August 27th and October 18th (925). Kribs took all deeds and mortgages in his own name. He admits using money that Smith had remitted and charged to him (580), although he asserts that on general account Smith was really indebted to him (583). He informed Smith of the purchase after the deeds had been taken and Smith consented to take the lands, paying him in addition to what he had paid 27½ cents per acre in accordance with the agreement between them (580-81). Smith says that before "Kribs came to us with the lands" (831) he knew absolutely nothing about the transaction between Kribs and the Mealey brothers and Thompson, or about the transaction between these locators and the entrymen (830) and that he took the lands from Kribs in good faith for full value (831-2).

Under our statement of facts in case No. 1973 we have shown how the entries involved in that case were suspended and investigation conducted under the direction of the Commissioner of the General Land Office by E. D. Stratford, special agent. The entries here involved came under the same suspension and investigation. As the evidence is very much the same in both cases, it is not deemed necessary to state here the facts connected with the investigation in as much detail as was done in the other case. The direction from the Commissioner to Stratford to make the investigation was given November 26th, 1900 (357) and related, in the first

place, only to the entries involved in the other case (358). But when Stratford first reported, December 24th, 1900, he called attention to the entries here involved (360-1) and it was upon his recommendation that these were also suspended (360-2). He reported to the Commissioner on March 9th, 1901, to the effect that he did not find "any tangible evidence of fraud" and recommended that the entries should be relieved from suspension and go to patent (369-71). On December 28th, 1901, he asked to be relieved and another special agent assigned to take up the work (378), but he was directed by the Commissioner to complete the investigation (381-2). Early in November, 1901, Stratford went to Sweet Home, at and near which the entrymen in this case resided, and took their affidavits. In these affidavits they said that they had mortgaged and deeded to Kribs for the consideration that Kribs had paid over to the Mealeys or Thompson, treating the transactions of mortgaging and conveying as having been made through the agency of the locators. The $50 which each entryman as a matter of fact had received from the locators was described in the affidavits as a location fee (622-699). Kribs had paid the Mealeys and Thompson for the land at the rate of $4.75 per acre, or $756 per quarter section, and the Mealeys and Thompson accordingly made a profit, aside from a $50 location fee, but this was not disclosed in the affidavits. Kribs employed John Van Zante, a lawyer of unquestioned standing, to attend to the taking of these affidavits and procure copies of them. Van Zante describes in detail

how the work was done (552-66). From his testimony it appears clearly that nothing was done in behalf of Kribs to have the entrymen falsify or color the facts in their affidavits. Stratford sent the affidavits to the General Land Office accompanied by a report in which he says:

"All those entries were made by parties, who at the time, at least that the entries were made, lived in the county in which the land was located. In each case the land was sold shortly after final proof was made, to Frederick A. Kribs of Minneapolis, Minnesota. The transfer of the land appears, with one or two exceptions, to have been made within from one to three days after proof was made. The longest period between proof and sale, being in the case of Fred Wodtli, where proof was made on August 16th, 1900, and the sale on the 24th day of September, 1900.

"In many of the cases, the said Frederick A. Kribs loaned the entrymen the money with which he paid the Government for the land and the expense incident to the entry. In no case except that of Fred Wodtli does the entryman offer any reasonable cause for the sale so soon after proof, and in no other case is there offered any reason for the entry, except for pure speculation.

"It appears to me that the statement of the entrymen, when considered in connection with the sale so soon after final proof makes a good *prima facie* case of fraud in each case above mentioned except that of Fred Wodtli, under the construction placed by the Department upon the provisions of the Timber and Stone Act requiring that entries of this kind shall be made only for the exclusive use and benefit of the entrymen, as laid down in the case of *U. S. v. Bailey, et al,* (12 L. D., 468), and *U. S. v. Searles, et al,* (19 L. D., 258), to which my attention is called, in Honorable Commissioner's letter of April 15th, 1901.

"I desire to say further that I have no hopes that at a contest, if one should be ordered, in these

cases, I would be able to procure any additional testimony than that herewith offered, in support of my contention that these entries were made in the interest of the said Frederick A. Kribs, and for speculative purposes. Believing as I do that the facts shown make a good *prima facie* case of fraud in connection with each of said entries, with the exception of that of Fred Wodtli, I recommend that each of said entries be held for cancellation, excepting that of Fred Wodtli, for the reason that they and each of them were not made for the exclusive use and benefit of the entryman, but were made for speculative purposes and for the benefit of the said Frederick A. Kribs" (647-9).

After receiving this report the Secretary of the Interior decided that the entries should be relieved from suspension and go to patent. The decision was made May 17th, 1902. It reviewed the law and the facts at great length (383-96). Pursuant to this decision, eight patents issued July 9th, and nine August 12th, 1902, as already stated.

An investigation of land frauds in Oregon was made by the Government in 1905 through Mr. Heney as attorney and William J. Burns as special agent. The entries here involved were covered by this investigation (551, 457). An affidavit of the two Mealeys and Thompson was taken at this time by Burns. It was introduced in evidence, but only against these three defendants (612-15), and its contents is therefore not material on this appeal.

The facts about the organization of the Linn & Lane Timber Company, its acquisition of about 53,000 acres of land, including those involved in this suit, in consideration of its capital stock, its authority to do business in Oregon, &c., are stated in detail

in our brief in case No. 1973, and as the evidence on that subject is identical in both cases, we shall not repeat the details here. The articles of incorporation were adopted May 23rd, 1906 (499-502); the incorporation under the laws of Minnesota completed May 31st, 1906 (776-77); the first meeting of the board of directors held June 9th, 1906 (518). It was then voted to accept deeds from Smith for timber lands in payment of the capital stock of $100,000 (519) and to comply with the laws of Oregon for doing business in that state as a foreign corporation (520). In case No. 1973 the details are stated how the stock was issued, transferred by sale and pledge and how it was held from time to time, after June 9th, 1906. This evidence will be found in the printed record of this case, pages 517-51, 499-514, 750-59, 817-20. The deeds from Smith to the Company were three in number, one covering about 42,000 acres in Linn, one 3,300 acres in Lane, and one 7,500 acres in Douglas County (734, 476, 867-74). The deed for the Linn county lands embraced the lands involved in this case (476-88), but as an undivided fourth interest was in the name of Charles J. Swanson, the legal title to that did not become vested in the Company until May 28th, 1907, when a deed from Swanson and his wife to the company was executed (489-495).

The deed from Smith referred to is the identical document by which he conveyed to the Company the lands involved in case No. 1973. In this case, the same as in the other, it was alleged in the amended bill that this deed "was not executed at the date

which it bears upon its face, but was executed by said defendant C. A. Smith and Johanna A. Smith, his wife, long after the commencement of this suit and shortly prior to the time the same was offered for record as aforesaid" (74). Some testimony was introduced in support of this allegation (403-43). We have in the other case pointed out how the evidence failed to prove the averment and how it was conclusively proven that the deed was executed on June 4th and delivered on June 9th, 1906 (See the brief in that case, pages 110-12). It was not claimed in the amended bill, or on the trial, that the deed from Swanson to the Company of the undivided fourth interest was not made on May 28th, 1907, as it purports to be (489-95). We apprehend that upon this appeal it will be conceded that the legal title to the lands covered by the patents here involved became vested in the defendant company by Smith's deed on June 9th, 1906, as to three-fourths, and by Swanson's deed on May 28th, 1907, as to one-fourth.

In deciding the case the Circuit Court disallowed the amendment to the bill as to the value of the land and denied the Government's right to recover damages (901). It held the arrangement between the 15 entrymen and the Mealey brothers and Thompson to be fraudulent (889, 894-5). The court says:

"There is no direct testimony in this case that there was any understanding or agreement with Kribs to furnish the money with which to pay for the land and pay the several expenses of attending the location and the amount due the locators prior to the initial application, but it seems to me that the conclusion is irresistible that such was the case" (895).

Kribs was held not to be an innocent purchaser from the entrymen (895). As to Smith the court says it may be true that he had no actual knowledge of the fraud "but whether Smith had actual knowledge of the fraud or not Kribs was his agent authorized to purchase the property and whatever knowledge Kribs acquired is chargeable to Smith" (896). As in case No. 1973 the court held that there was such identity of interest between Smith and the defendant company that the latter was not entitled to the protection of the statute of limitations, although the suit was not commenced against it until more than six years after the date of the patents (897-901). The suit was held to have been commenced against Smith "when the warning order was issued to him and placed in the hands of the proper officer for service" (899). As this was more than six years after the date of the patents of July 9th and less than six years after the date of those of August 12th, 1902, the court entered a decree dismissing the bill as to the former patents but vacating and annulling those of August 12th. The Government and the defendants, the Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs appealed from this decree, to the Circuit Court of Appeals for the Ninth Circuit, the Government assigning as error the dismissal of the bill as to the eight patents of July 9th, and the defendants the cancellation of the patents of August 12th (902-20). On May 20th, 1912, a decree was rendered by that court affirming the decree of the lower court (931-40). On the fol-

lowing June 15th, the Government filed a motion in the Court of Appeals to amend its decree so as to annul the patents of July 9th as well as those of August 12th (940-3). On February 24th, 1913, an order was made by the Court of Appeals granting this motion (945-7). From the decree of the Court of Appeals so amended the Linn and Lane Timber Company and Charles A. Smith appeal to this court (947-61).

SPECIFICATIONS OF ERRORS RELIED UPON.

The appellants, the Linn and Lane Timber Company and Charles A. Smith, assert that in rendering the decree entered in the above entitled cause on the 20th day of May, 1912, affirming the decree of the Circuit (now District) Court of the United States for the District of Oregon, and by the order and decree amending said decree of May 20th, 1912, entered on the 24th day of February, 1913, the said United States Circuit Court of Appeals erred in the following particulars, to-wit:

(1) It was error to affirm the decree appealed from as to the nine patents of August 12, 1902, because as to these patents the suit was barred by the Act of Congress of March 3rd, 1891 (26 St. L. 1093) having not been commenced against the Linn and Lane Timber Company, the owner of the title granted by said patents, within six years after the date of the patents, as required by said act.

(2) It was error to direct the Circuit (now District) Court of the United States for the Dis-

trict of Oregon, to enter a decree, anulling, vacating and setting aside the eight patents of July 9th, 1902, because as to these patents the suit was barred by said Act of Congress of March 3rd, 1891, having not been commenced against the Linn and Lane Timber Company, the owner of the title granted by said patents, within six years after the date of the patents, as required by said act.

(3) It was error to direct said Circuit (now District) Court of the United States for the District of Oregon to enter a decree, annulling, vacating and setting aside the eight patents of July 9th, 1902, because as to these patents the suit was barred by said Act of Congress of March 3rd, 1891, having not been commenced against Charles A. Smith or Charles J. Swanson, in whom the title to the lands covered by said patents appeared of record when the bill was filed, within six years after the date of said patents, as required by said Act.

(4) It was error to affirm the decree of said lower court as to the nine patents of August 12th, 1902, and to direct said lower court to enter a decree annulling the eight patents of July 9th, 1902—

(*a*) Because the complainant failed to prove that Frederick A. Kribs, when he purchased the land for which said seventeen patents were issued, had notice of the alleged conspiracies, frauds, or irregularities complained of in the bill in connection with the entries on said lands;

(*b*) Because the complainant failed to prove that Charles A. Smith, when he purchased the lands for which said seventeen patents were issued had

notice of some of the alleged conspiracies, frauds, or irregularities complained of in the bill in connection with the entries on said lands;

(*c*) Because Frederick A. Kribs, for a full and adequate consideration, purchased the lands for which said seventeen patents were issued from the persons who entered and purchased the same from the complainant, with no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the bill in connection with the entries on said lands, but in good faith believing said persons could rightfully and lawfully sell and convey said lands;

(*d*) Because Charles A. Smith, for a full and adequate consideration, purchased the lands for which said seventeen patents were issued from said Frederick A. Kribs (one-fourth interest being conveyed to Charles J. Swanson and three-fourths to himself) with no notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands, but in good faith, and that said Smith and Swanson thereafter before the commencement of the suit, conveyed said lands to the Linn & Lane Timber Company;

(*e*) Because the entries of the lands for which said seventeen patents were issued had been fully investigated under the direction of complainant's Secretary of the Interior, by officers of his department, with reference to all the alleged conspiracies, frauds and irregularities complained of in the bill in connection with said entries, and that after such

investigation, on the evidence adduced, said Secretary had determined and decided said entries to be in all respects lawfully made and valid, and had thereupon directed said seventeen patents to be issued.

(5) It was error to hold the patent to Alexander Gould void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878 (20 St. L. 89).

(6) It was error to hold the patent to Sydney H. Scanland void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(7) It was error to hold the patent to Richard F. Malone void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(8) It was error to hold the patent to John J. Gilliland void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of

notice of some of the alleged conspiracies, frauds, or irregularities complained of in the bill in connection with the entries on said lands;

(*c*) Because Frederick A. Kribs, for a full and adequate consideration, purchased the lands for which said seventeen patents were issued from the persons who entered and purchased the same from the complainant, with no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the bill in connection with the entries on said lands, but in good faith believing said persons could rightfully and lawfully sell and convey said lands;

(*d*) Because Charles A. Smith, for a full and adequate consideration, purchased the lands for which said seventeen patents were issued from said Frederick A. Kribs (one-fourth interest being conveyed to Charles J. Swanson and three-fourths to himself) with no notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands, but in good faith, and that said Smith and Swanson thereafter before the commencement of the suit, conveyed said lands to the Linn & Lane Timber Company;

(*e*) Because the entries of the lands for which said seventeen patents were issued had been fully investigated under the direction of complainant's Secretary of the Interior, by officers of his department, with reference to all the alleged conspiracies, frauds and irregularities complained of in the bill in connection with said entries, and that after such

investigation, on the evidence adduced, said Secretary had determined and decided said entries to be in all respects lawfully made and valid, and had thereupon directed said seventeen patents to be issued.

(5) It was error to hold the patent to Alexander Gould void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878 (20 St. L. 89).

(6) It was error to hold the patent to Sydney H. Scanland void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(7) It was error to hold the patent to Richard F. Malone void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(8) It was error to hold the patent to John J. Gilliland void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of

June 3rd, 1878.

(9) It was error to hold the patent to Louis Maynard void, because the evidence did not show that *that* his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(10) It was error to hold the patent to William J. Lawrence void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(11) It was error to hold the patent to Richard C. Watkins void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(12) It was error to hold the patent to James W. Rozell void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(13) It was error to hold the patent to Cornelius N. Tuthill void, because the evidence did not show that his duplicate written statement to pur-

chase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(14) It was error to hold the patent to O. Judd Mealey void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(15) It was error to hold the patent to Charles Wiley void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(16) It was error to hold the patent to Joseph O. Mickalson void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(17) It was error to hold the patent to John Thomas Parker void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 2nd, 1878.

(18) It was error to hold the patent to Samuel D. Pickens void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(19) It was error to hold the patent to Joseph H. Steingrandt void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(20) It was error to hold the patent to John A. Thompson void because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

(21) It was error to hold the patent to William W. Billings void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3rd, 1878.

ARGUMENT.

The case referred to in the statement as No. 1973 will either have been argued before this appeal is reached, or both will be argued at the same time. We therefore assume that as to questions which are identical in both cases, it can serve no purpose to repeat in this brief our argument in the other case. We trust that merely referring to our brief in that case on such questions will meet the approval of the court.

I.

The Evidence of Fraud in the Entries Was Not Sufficient to Justify a Decree Annulling the Patents.

The fraud charged in the bill was that pursuant to a conspiracy between O. Judd Mealey, Will Mealey and John A. Thompson on the one hand and Kribs, Smith and Swanson on the other, the two Mealeys and Thompson procured fifteen entrymen to file, and that each entryman "prior to making and filing his application to purchase and enter said lands, made and entered into a contract and agreement with the said defendants, O. Judd Mealey, Will Mealey and John A. Thompson, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants, Frederick A. Kribs, C. A. Smith and Charles J. Swanson, whom the said O. Judd Mealey, Will Mealey and John A.

Thompson then and there represented and acted for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied for to thereupon and thereafter transfer and convey said lands by warranty deed to the said Frederick A. Kribs, C. A. Smith and Charles J. Swanson or some of them" (62).

As to O. Judd Mealey's and John A. Thompson's entries, the charge is that "said defendants, O. Judd Mealey and John A. Thompson, prior to making their said application and entries, heretofore mentioned each entered into an agreement with the said defendants, C. A. Smith and Frederick A. Kribs, in and by which the said O. Judd Mealey and John A. Thompson each promised and agreed upon being permitted to enter said lands so applied for and filed upon by him to transfer, convey and set over said lands by warranty deed to the said defendants, Frederick A. Kribs, C. A. Smith or Charles J. Swanson" (62).

The inquiry is whether these averments are sustained by evidence "clear, unequivocal and convincing," not by a "bare preponderance of evidence that leaves the issue in doubt." *Maxwell Land Grant case*, 121 U. S. 325; *Colorado Etc. Co. v. U. S.*, 123 U. S. 307, 316; *San Jacinto Timber Co. v. U. S.*, 125 U. S. 273; *U. S. v. Budd*, 144 U. S . 154; *U. S. v. Stimson*, 197 U. S. 200, 204.

Kribs asserts that he did not come in contact with any of the fifteen entrymen until the time of the final proofs (577-79), and he is corroborated by every entryman who testified on that subject.

The entrymen who received the patents of July 9th filed from May 15th to June 14th and proved up from August 15th to August 27th. The entrymen who received the patents of August 12th filed from July 12th to July 19th and proved up from October 9th to October 17th. There is a difference in point of time of from four to six weeks. The witnesses connected with the earlier entries did not come in contact with the later entrymen. Only four out of the nine that received patents dated August 12th were called as witnesses, namely, Scanland (301), Malone (254), Lawrence (199) and Tuthill (215). The five who were not called as witnesses were Gould, Gilliland, Maynard, Watkinds and Rozell.

The good faith or fraud on the part of the four that testified must be taken from their own testimony; the good faith or fraud on the part of the other five is a matter of inference. It is true that Fred Wodtli testified that Gilliland, Gould and Watkinds had each said that he was getting $50 from the Mealeys for the land (624-5). Gilliland's statement, he said, was about the time of the final proof (624); Gould's he thought was after final proof (625), and Watkind's statement "might have been two weeks either before or after" (625). These statements were admitted over the objections of the defendant company and Smith (622-3). The court considered the statements admissible because they were made by a party "charged in this bill as one of the conspirators" (623). But the entrymen were not included in the conspiracy charge; as al-

ready stated that charge only covered the two Mealeys and Thompson and Kribs, Smith and Swanson. The statements would have been incompetent even if the parties making them had been charged with conspiracy, because there was no evidence sustaining the conspiracy charge against Smith and Swanson; also because the statements were made after the entrymen had conveyed the land. Admissions of a conspirator are not admissible if made after the conspiracy is accomplished. *Jones Law of Evidence*, Par. 225. The admissions, moreover, only showed that when the lands were deeded the entrymen received $50 over and above the price to the Government and the expenses, and had no tendency to show an agreement to sell prior to the filing.

The testimony of all the entrymen goes to show that, with the exception of Tuthill, each took his claim on his own initiative; all lived near the timber, and many of them were evidently some of the oldest residents in that locality. All were industrious and respectable citizens. What the evidence shows is that when these men observed that the timber was being taken up and heard that individuals taking claims were selling them again at a profit, and that the Mealeys and Thompson were locating people, they concluded to avail themselves of their rights under the act and applied either to one of the Mealeys or Thompson for a location; were thereupon taken to the land and to the land office by the locators; made no agreement with the locators of the character charged in the bill, but

were induced to execute deeds at the time of the final proofs for a consideration of $50 over and above the government price and the expenses connected with the entry. This we contend did not prove the fraud charged. If the Mealeys and Thompson were responsible for the report that persons taking claims would make $50, the case is in that respect identical with the Budd case.

All that the act denounces, says Judge Brewer, is a "prior agreement, the acting for another in the purchase * * * Montgomery might rightfully go and send into that vicinity and make known generally or to individuals a willingness to buy timber land at a price in excess of that which it would cost to obtain it from the government; and any person knowing of that offer might rightfully go to the land office and make application and purchase a timber tract from the government" (144 U. S. 163).

The Circuit Court makes a sweeping statement that all the entries involved in the suit were fraudulent, but the statement cannot have been well considered. The charge against the entries of O. Judd Mealey and John A. Thompson is a direct agreement between them and Kribs, Smith or Swanson prior to filing. All the evidence concerning these entries is the testimony of Kribs. He says that shortly before O. Judd Mealey and Thompson made final proofs, which was on August 16th, he was asked to lend them the money with which to prove up (568) and that he then told them that he would do so, but that he would a great deal

rather buy the land. Upon this suggestion they deeded their respective claims to him for a price of $5.25 or $5.50 per acre (571). As to these two entries, this is all there is by way of "clear, unequivocal and convincing evidence" that they were fraudulent.

II.

The Question of Fraud in the Entries Was Conclusively Decided by the Secretary of the Interior.

In our brief in No. 1973, pages 70-74, we have stated our views at length concerning the decision of the Secretary of the Interior of May 17th, 1902 (383-93), both as an adjudication upon the question of fraud, binding upon the courts, and as evidence that the Government was not defrauded, but issued the patents with knowledge of the facts upon which it now seeks to have them vacated. On that brief we have also cited the decisions of this court which we consider to be in point, notably *United States v. Throckmorton*, 98 U. S. 61. We could add but little here to what is said in that brief. While all we have said in the other case is applicable here, there is a slight difference in the facts to which we shall call attention.

The Secretary of the Interior seems to have detailed his special inspector, Green, to investigate more particularly the so-called Puter and McKinley entries, and Green's report to the Secretary covers those entries in considerable detail, while it makes no specific reference to the entries in-

volved in this case (466-76). This is one difference between the two cases. Another is this: Stratford was detailed to investigate the entries in both cases alike, and did so, but while his final recommendation on the Puter-McKinley entries was that they should go to patent, his recommendation on the entries here involved was that "each of said entries be held for cancellation, excepting that of Fred Wodtli for the reason that they, and each of them, were not made for the exclusive use and benefit of the entrymen, but were made for speculative purposes, and for the benefit of the said Frederick A. Kribs" (647-9). There is probably also this difference in the two cases, that with this adverse recommendation and with the testimony of Van Zante (552-62), showing what Kribs had to do with the affidavits which Stratford took from the entrymen, there is little reason in this case for claiming that Stratford was influenced by Kribs to the prejudice of the Government.

III.

Kribs was a Bona Fide Purchaser.

Kribs visited the timber on two occasions. The first visit must have been April 2nd or 3rd, for he passed through Albany in going to the timber on April 1st. The second must have been May 22nd or 23rd, for he was then in company with Smith, who arrived in Albany May 21st. O. Judd Mealey and Thompson filed May 15th and proved up August 16th. Kribs bought their claims at the time of

final proofs, paying $5.25 or $5.50 per acre (571-2). He was not in contact with them prior to this time, except on the two visits in April and May. If they filed on May 15th pursuant to any arrangement with him, that arrangement could only have been made on that trip the first days in April. It does not stand to reason that he should have hired them to make entries when he met them as perfect strangers, *or, if he had done so, that in August he should have paid them all the land was worth to get their deeds.* It would, indeed, be strange if O. Judd Mealey and Thompson, who lived in the neighborhood and were so well acquainted in the timber that they could locate other people, should not have taken claims for themselves of their own accord, being entitled to do so, and being men of some means, so they could easily have paid the government price without borrowing the money (163-4, 337-51). As to these two claims there is no evidence of fraud or of notice of fraud to Kribs.

The fraud, if any, in the other fifteen entries consisted in agreements prior to filing with the Mealeys or Thompson, and it may be said that these men dealt with Kribs on behalf of the entrymen in such a manner as to put him on inquiry. But he testifies that he took the deeds in good faith (573, 602) and he is supported by the fact that he paid full value (574) and more than it would have cost to get the same or equally good claims by scrip, so he had no motive for taking deeds known to be tainted with fraud. On the whole we think the evidence to charge him with notice should be held

insufficient. The burden to show that he was not a *bona fide* purchaser was on the Government (*United States v. Clark*, 200 U. S. 601, 607).

IV.

Smith was a Bona Fide Purchaser.

In purchasing timber lands Kribs was not Smith's general agent. He was purchasing largely both on his own account and for other eastern parties (580-1, 584, 604). When he found opportunities to purchase, he was at liberty to buy for himself, which he often did, or for others, which was also often done, and he could only buy for Smith with the latter's express previous approval (581). That this was the relation between Kribs and Smith appears not only from their testimony but from the fact that that was the way Kribs was actually doing business. He was making large investments for Smith under this arrangement, and Smith remitted large sums of money to him from time to time. For this money he was charged (583) and he was credited when they had an accounting. It is impossible to determine how the account stood between them when the seventeen claims were bought between August 16th and October 18th, 1900 (925). Some of the money which Smith remitted, Kribs used in buying scrip, for which he paid $3.25 per acre (848). Kribs thinks Smith was in his debt when these claims were purchased (583), but no account being taken until a year later, it cannot be determined how the account

stood at this particular time. We do know that when the account was taken December 21st, 1901, Smith was owing Kribs $23,505.50 (400). By the terms of this settlement Smith was to pay Kribs interest on $20,000, showing that Kribs had considerable capital of his own. The remaining $3,505.50 were to be withheld until titles were complete, showing that Kribs assumed responsibility for the title acquired through him (400-1). Smith says: "I held Mr. Kribs responsible for securing of the titles" (857). Kribs admits that he purchased the seventeen claims, taking deeds running to himself, without instruction from Smith, but acting entirely on his own judgment (582). He says he used "practically" Smith's money, but admits he did not tell Smith about the purchases until after they were made (580). On one occasion he had located scrip without Smith's previous assent, and when Smith expressed dissatisfaction, he promptly took the lands for himself and another customer (584). Smith says that with the purchase of these seventeen claims from the entrymen, or from the Mealeys and Thompson, he had absolutely nothing to do personally (830). He says the first he knew about these claims was "when Mr. Kribs came to us with the lands," which, he says, was after they had been deeded to Kribs (831), and that when he took the lands from Kribs he did so in good faith (831).

If Kribs was not himself a *bona fide* purchaser of the fifteen claims on which filings were made from June 14th to July 19th, it was either because he was

himself connected with the filings, through the Mealeys or Thompson, or because he purchased the claims from them under circumstances charging him with notice of agreements between them and the entrymen. If the former was the case, the relation between Kribs and Smith was not such that a fraudulent bargain on the part of Kribs in connection with the filings can be said to be Smith's act. There is nothing in the evidence upon which it can fairly be claimed that Smith ever authorized Kribs to acquire lands by having persons file under the Timber and Stone Act. There is, in other words, no evidence to sustain the conspiracy charge as far as Smith is concerned. If the evidence can be said to connect Kribs with the filings, he came by the legal title from the entrymen as a wrongdoer on his own behalf and not as Smith's agent or trustee, and in the transaction which followed, in which Smith took the lands off his hands, their interests were so adverse that notice to Kribs could not be chargeable to Smith. The law would not presume that Kribs informed Smith of his own fraud.

If Kribs was not a *bona fide* purchaser because the circumstances under which the Mealeys and Thompson dealt with him on behalf of the entrymen were sufficient to put him on inquiry, Smith's position as a *bona fide* purchaser would be the same. For Kribs had no authority to purchase these claims. He bought them on his own responsibility and at his own risk, and Smith was under no obligation to take them off his hands. So when Kribs, after he had taken title to himself, came to

Smith with the lands, he represented himself and his own interest in turning the claims over to Smith, and no communication of notice can be presumed.

In our brief in No. 1973, pages 74-861, we have given our reasons for contending that Smith is not chargeable with any notice to Kribs. What is said there applies with equal force to this case. We have also shown on the other brief that under the provision of Section 2 of the Timber and Stone Act, it is not sufficient for the Government to show that the purchaser from an entryman had constructive notice, but that he must be shown to have purchased with actual notice, or to have been guilty of gross or culpable negligence in making the purchase. That, too, applies to this case. We shall not repeat but merely call attention again to the case of *Pine, etc. Co. v. Bailey*, 94 Fed. 258, as the facts in that case make it specially applicable to the case at bar.

V.

The Suit Was Barred as to All Patents Involved by the Act of March 3, 1891, 26 St. L. 1093.

The deed from Smith of June 4th, 1906 (476-88), delivered to the Company June 9th, 1906 (519-20; 733-37; 952-4; 810-16; 817) together with the two other deeds for lands in Lane and Douglas Counties (867-74), embraced the lands involved in this case and in No. 1973. The legal title to the lands in the latter case stood at that time in the

name of Werner so that the Company was not fully vested with it until it received Werner's deed of August 15th, 1907. The legal title to the lands involved in this case stood three-fourths in Smith and one-fourth in Swanson, and Smith's deed of June 4th accordingly vested an undivided three-fourths in the Company on June 9th, and the remaining fourth was acquired when it received Swanson's deed of May 28th, 1907 (489-495). Aside from this immaterial difference as to the time when the Company became completely vested with the legal title, there is, as to the Company, no difference between the two cases as respects the statute of limitation. All the patents involved in No. 1973 were dated August 12th, 1902; nine of those involved here were of the same date and eight were issued July 9th, 1912. The proceedings to make the Company a party were the same both in form and in point of time in both cases. It follows that if the statute is held a bar in No. 1973, it must be held a bar as to all the patents involved here. We so contend. We shall not repeat the argument, but merely refer to our brief in the other case, pages 87-147.

VI.

The Decree of the Circuit Court Should not have been Reversed as the Patents of July 9th.

Patents cannot be annulled by decree without having those who hold the legal title parties. *United States v. Central etc. Ry. Co.*, 11 Fed. 449-458, and cases cited; *United States v. Winona etc.*

Ry. Co., 67 Fed. 948, 961. Assuming that the lower courts were justified in ignoring the existence of the defendant company and the conveyances to it, it must be conceded that Smith and Swanson were indispensible parties—Smith because he held the title to three-fourths until he executed to the Company his deed of June 4th, 1906, and Swanson because he held the title to one-fourth until he executed to the Company his deed of May 28th, 1907. Now the suit was not commenced against Smith or Swanson until more than six years after the issuance of the patents of July 9th. The Circuit Court so found (899). The Court of Appeals says that as to this it finds it unnecessary to express an opinion, placing the reversal on other grounds (946). We shall first show that the Circuit Court was right as to the time when the suit was commenced against Smith and Swanson, and next discuss the other grounds upon which that portion of the decree was reversed.

A.

THE SUIT WAS NOT COMMENCED AGAINST SMITH AND SWANSON UNTIL MORE THAN SIX YEARS AFTER THE ISSUANCE OF THE PATENTS OF JULY 9TH.

Rule 20 of the Equity Rules (old and new) provides that

"Every bill, in the introductory part thereof, shall contain the names, *places of abode* and citizenship of all parties, plaintiffs and defendants, by and against whom the bill is brought," etc.

The purpose of stating the place of abode of the defendants is evidently to enable the clerk to issue as appropriate mesne process the subpoena *ad respondendum,* in accordance with the provisions of Rules 7 and 12, if the place of abode appears to be within the district. Neither the rules nor the statutes contemplate the subpoena *ad respondendum* to be issued to a defendant not appearing by the bill to have his abode within the district. At all events the subpoena *ad respondendum* is ineffective and therefore not proper process as to a defendant who is not in fact within the district. The district attorney knew at least that Smith resided in Minneapolis, Minnesota, but he did not state the places of abode of any of the defendants in the bill. When, therefore, the clerk at the time of the filing of the original bill on May 25th, 1908, at the oral request of the district attorney (926), issued against Smith and Swanson a subpoena *ad respondendum,* that cannot be said to mark the time of the commencement of the suit against them, for they were both residents of Minnesota and were not within the district. As to them, the only appropriate process was the so-called warning order for which provision is made by Section 738, Revised Statutes, as amended by the Act of March 3d, 1875, Section 8 (18 St. L. 422).

If it be contended that it is proper practice to issue a subpoena *ad respondendum* against a non-resident defendant in order to obtain the marshall's return of "not found" as evidence of non-residence,

the issuance of the subpoena in this case must nevertheless be held not to mark the time of the commencement of the suit against Smith and Swanson, because no proceeding to obtain substituted service was instituted while the subpoena was in force. It was made returnable July 6th, 1908 (31). It was a writ (Story Equity Pleading, § 45), and like all writs its efficacy expired with its return day. *Bugberd's Case Cro. Eliz.*, 180; *Parrot v. Mumford*, 2 Esp. 585; *Draper v. Draper*, 59 Ill. 119; *Hitchcock v. Haight*, 2 Gill. 603; *State v. Kennedy*, 18 N. J. L. 22; *Butler v. Corbett*, 2 Strobhart Law Rep. (S. C.) 1; *Blodgett v. Town*, 28 Vt. 695; *Crews v. Garland*, 2 Munford, 491; *Johnson v. Shepherd*, 35 Mich. 115.

Equity Rule 14 provides for an *alias* subpoena, but no *alias* was issued here. Nothing was done until July 20th, 1908, when the district attorney filed an affidavit and a motion to procure the warning order (32-37), and upon this affidavit and motion the warning order issued July 27th (38-40). From July 6th until July 27th there was no mesne process of any character under which a valid service could have been made on Smith or Swanson. On July 9th, the six years after the date of the issuance of the patents expired. Can it be said that on that day, with no mesne process in existence for personal or substituted service, the suit against Smith or Swanson had been commenced?

It is interesting in this connection to note the well settled rule as to the effect of an *alias* or *pluries* to avoid the statute of limitation. If not

issued while the original is still in force it is held that it and not the original marks the time of the commencement of the suit. *Davis v. West,* 5 Wend. 64; *Soulden v. Van Rensaeler,* 3 Wend. 472; *Orange County Bank v. Haight,* 14 Wend. 83; *Hanna v. Ingram,* 8 Jones (N. C.) 55. In the case last cited, a writ was issued returnable at the March term in 1857 and returned "not found." No *alias* was issued returnable at the next ensuing term, but one was issued returnable at the March term, 1858. The question was whether the suit was commenced at the issuance of the first writ. The court said:

"We concur with his Honor below, that it was at the issuing of the last writ—the one from the Fall Term, 1857, to the following spring. This latter, although denominated an *alias* does not connect itself with the other so as to make one continuous suit, a term having intervened from which no process was issued. In the case of *Fullbright v. Tritt,* 2 Dev. and Bat. 491, it was held that such failure under precisely similar circumstances, worked a discontinuance of the suit as the issuing of the writ, purporting to be an *alias*, at the subsequent term, was the beginning of a new suit. The case of *Fullbright v. Tritt* is in point and is satisfactory to us. It decides the cause before us in accordance with the opinion of the judge below, and his judgment should, therefore, be affirmed."

In *Baskins v. Wilson,* 6 Cowan 470, it was held that

"to suspend the statute of limitations, on the ground of unexecuted process, within the six years, the plaintiff must reply that process was sued out, and returned *non est inventus;* and connect it, by continuance with the immediate process on which the

defendant was arrested. And this replication must be sustained by evidence."

When by the statute the writ is made returnable in vacation, the *alias* or *pluries* must issue on the return day of the preceding writ in order to connect the later process with that first issued. In *Johnson v. Mead,* 58 Mich. 67, which was commenced by summons issued October 20th, 1883, returnable November 6th, 1883, the summons was returned November 7th personally served on one of the defendants, the other defendant, Mead, "not found." On November 17th an *alias* was issued for the defendant Mead. Later *pluries* writs were issued from time to time and service made on Mead. There was an interval of eleven days between the return day of the first writ and the issuing of the second, and one day between the return day of the second and the issuing of the third, and between the return day of the third and the issuing of the fourth, two days; and between the return day of the fourth and the issuing of the fifth, one day; and between the return day of the fifth and the issuing of the sixth, twenty-five days. The defendant was personally served on April 26th, 1884. The statute of limitations had become effective as a bar between the commencement of the suit and the service of the writ unless the issuance of the several writs as stated had the effect of tolling the statute. Mead asserted the statute and claimed that the suit could not be considered as pending from the date of the issuance of the first writ for the reason that there were intervals between the writs when no

process was outstanding. Justice Campbell in disposing of the case said, "In my opinion the interval between the successive writs interrupted the continuity of the action, so that the limitation became a bar to recovery."

There can be no action commenced and pending so as to toll the statute of limitations unless there be at all times valid process in the hands of an officer for service or in process of issuance.

If the court should hold in this case that it was proper practice to issue the write of subpoena in the first instance though it was known to the complainant that the defendants Smith and Swanson were non-residents, then as a necessary corrollary to such rule it must also be held that if these defendants were not found in the district, proceedings for substituted service had to be commenced during the lifetime of the outstanding process, in order to continue the suit as "begun." The last day for instituting proceedings for substituted service is the return day of the writ, if returnable in vacation, or the term at which it is returnable, if returnable at a term. Any other rule would defeat the very purpose of all statutes of limitation. *If the Government could delay proceedings for the warning order for three weeks after the expiration of the subpoena, it could just as well have delayed three years.* The difference in time involves no difference in principle, nor is it a question of good faith. In one sense it may be said that good faith was shown in the Michigan case last cited; so also in the *American Lumber Company* case, 85 Fed-

eral 827, but the court said in the latter case (p. 831) "the *bona fides* must be shown by proof that an effort was made to proceed according to law, and that use was made, or attempted to be made, of the means which the law prescribes."

After the return day of the writ in this case not a step was taken in the line of lawful procedure to acquire jurisdiction of the defendants Smith and Swanson for a period of nearly three weeks.

As to the Company, the suit was not commenced until November 16th, 1908, six years and 130 days after the issuance of the patents of July 9th; as to Smith and Swanson, its grantors, the suit was not commenced until July 27th, 1908, six years and 18 days after the issuance of those patents.

B.

THE GROUNDS UPON WHICH THE DECREE OF THE CIRCUIT COURT WAS REVERSED AS TO THE PATENTS OF JULY 9TH.

The Court of Appeals quotes with approval the views of the district judge as follows:

"Smith is the real party in interest and the beneficial owner of the property. * * * In fact, Smith is the corporation and the corporation is Smith. The question of the statute of limitations should therefore be determined by the time the suit was commenced against Smith and the holders of the record title" (898, 937).

The error of this (as we believe) both as to law and fact we have shown in our brief in No. 1973, pages 87-110.

Referring to the patents of August 12th, 1902, as to which the suit was brought against Smith within six years of their dates, the Court of Appeals in the first opinion says, "We think there is other ground on which the judgment of the court below may be sustained," and proceeds to state that the Act of March 3, 1891, limiting the bringing of suit to six years "after the date of the issuance of the patents" is to be construed the same as the Bankruptcy Act of March 2nd, 1867, limiting the bringing of suit to two years "from the time the cause of action accrued," namely, that it runs from the time of the discovery of the fraud and not from the date of the patents (937). The soundness of this view we have discussed in our brief in the other case, pages 116-138.

It was on the strength of this part of the opinion that the Government moved to amend the decree of the Court of Appeals so as to reverse the decree of the Circuit Court as to the patents of July 9th (941). In granting that motion the Court of Appeals says:

"Upon a careful reconsideration of the authorities we are of the opinion that the fraud of the defendants as alleged in the bills and shown by the facts was sufficient to toll the statute of limitations as to all the lands involved in the suits. The fraud not only antedated the patents, but after the patents were issued fraudulent conveyances were made and concealed and kept from record obviously for the purpose of covering up the prior fraudulent transactions" (946).

What the Court refers to as the fraud of the defendants antedating the patents must be the al-

leged fraud in the entries. With those frauds, if any there were, Smith and Swanson had nothing to do. The bill to be sure charges them with having conspired with the entrymen (56) but there is not a *scintilla* of evidence to support the charge. By fraudulent conveyances made and concealed the court cannot refer to the deeds from the entrymen to Kribs, executed on various dates between August 27th and October 18th, 1900, for these were known to the Government nearly two years before the patents issued (387-359; 632-699, 925); nor to the conveyance by Kribs of a three-fourths interest to Smith and a one-fourth interest to Swanson by the deeds of respectively, October 24th and December 28th, 1904, for these deeds were promptly recorded, and were well known to the Government, as may be seen from the original bill, in which they are minutely described (25-26). There is absolutely nothing in the record by way of averment or proof that any conveyance in the chain of title from the entrymen to Smith and Swanson was concealed or unknown to the Government. By fraudulent conveyances made and concealed, the Court of Appeals can only mean the deed from Smith to the Company of June 4th, 1906, and the deed from Swanson to the Company of May 28th, 1907 (476-496). With what reason these deeds can be characterized as fraudulent we have discussed in our brief in No. 1973, pages 87-116. How the Court can say that these deeds "were kept from record obviously for the purpose of covering up prior fraudulent transactions" we do not understand.

How could the omission to promptly record these deeds cover up any fraud in the entries affecting the validity of the patents?

When the reasons given for annulling the patents of July 9th are examined in the light of facts it will be found that the judgment rests wholly upon the proposition that the statute does not begin to run from the date of the issuance of the patents, but from the time when fraud in the entries is discovered by the Government, a proposition which we have fully discussed in our brief in the other case, pages 116-136.

VII.

The Government had Notice of the Alleged Fraud More than Six Years Before the Suit was Brought.

The entries were suspended for investigation and on December 28th, 1901, special agent Stratford reported to the Commissioner of the General Land office that Kribs had furnished the money for making final proofs and received mortgages and deeds from the entrymen.

The affidavits which Stratford took and sent to the Commissioner are found in the record, pages 632-699. The memorandum he attached to the affidavit of Richard F. Malone (644-653), was made part of each of the other affidavits. In that memorandum he informed the commissioner that

"In no case except that of Fred Wodtli does the entryman offer any reasonable cause for the sale (to Kribs) so soon after proof, and in no other case

is there offered any reason for the entry except for pure speculation. It appears to me that the statement of the entrymen, when considered in connection with the sale so soon after final proof, makes a good *prima facie* case of fraud in connection with the entry in each case above mentioned, except that of Fred Wodtli, under the construction placed by the Department upon the provisions of the Timber and Stone Act requiring that entries shall be made exclusively for the use and benefit of the entryman, as laid down in *United States v. Bailey, et al.* (17 L. D. 468), and *United States v. Searles, et al.* (19 L. D. 258), to which my attention is called in Honorable Commissioner's letter of April 15th, 1901. * * * Believing as I do that the facts shown make a good *prima facie* case of fraud in connection with each of said entries, with the exception of that of Fred Wodtli, I recommend that each of said entries be held for cancellation, excepting that of Fred Wodtli, for the reason that they, and each of them, were not made for the exclusive use and benefit of the entryman, but were made for speculation purposes, and for the benefit of said Frederick A. Kribs" (648-9).

The Commissioner of the General Land Office placed this report before the Secretary of the Interior, who reviewed it in his decision of May 17th, 1902 (389-95). The Secretary considered the evidence of frauds in the entries not so strong as in the cases cited in the special agent's report (392), and directed the entries to go to patent (395). But the *indicia* of fraud to which his attention was called were as strong, we think, as those upon which the lower courts found all the entries to be fraudulent.

"Whatever is notice enough to excite attention and put the party on his guard and call for inquiry is notice of everything to which such inquiry might

have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant with it." *Wood v. Carpenter*, 101 United States, 135, 141.

If there were fraud in any of the seventeen entries it was, applying this rule, discovered by the Government through the Commissioner of the General Land Office and the Secretary of the Interior, prior to the issuance of the patents.

We submit that the decree appealed from should be reversed with direction to dismiss the bill.

JOHN LIND,
A. UELAND,
W. M. JEROME,
Counsel for Appellants.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. [redacted] 159

THE LINN & LANE TIMBER COMPANY AND CHARLES A. SMITH, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED APRIL [redacted], 1915.

(23,661)

(23,661)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1086.

THE LINN & LANE TIMBER COMPANY AND CHARLES A. SMITH, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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(Title of Court and Cause.)

Names and Addresses of Attorneys of Record.

Mr. JOHN LIND, Mr. A. UELAND and Mr. W. M. JEROME, Minneapolis, Minnesota, and DOLPH, MALLORY, SIMON and GEARIN, Mohawk Building, Portland, Oregon, for Linn and Lane Timber Company, Charles A. Smith and Charles J. Swenson.

Mr. A. H. TANNER, Portland, Oregon, for Frederick A. Kribs.

Mr. JOHN McCOURT, United States Attorney, Portland, Oregon, for the United States of America.

(Title of Court and Cause.)

Stipulation as to Printing of Records, etc.

Whereas, said complainant and defendants have appealed from a decree of the Circuit Court for the District of Oregon in the above-entitled cause to said Court of Appeals, and one transcript of the record of such Circuit Court has been prepared for both appeals, it is hereby stipulated between the complainant, by the United States Attorney for the District of Oregon and said defendants, by their solicitors and counsel, as follows:

1. The cost of docketing said cause in said Court of Appeals and of printing said transcript shall be

paid, one-half by the complainant and one-half by the defendants.

2. Either of the parties may cause said transcript to be printed, certified and filed in said Court of Appeals as provided by the Act of February 13, 1911, and the order or rule of the Supreme Court, promulgated March 13, 1911, all objections for non-compliance with Rule 23 of said Court of Appeals and by reason of no rule having been adopted by the Circuit Court for the District of Oregon as contemplated by said Act being hereby waived; and either party may without notice to the other apply to said Circuit Court for a rule or order authorizing said transcript to be printed, certified and filed as in this paragraph provided.

3. But either party may have said transcript printed as provided by rule 23 of said Court of Appeals.

4. It is agreed that whether the printing of said transcript be done in accordance with paragraph 2, or in accordance with paragraph 3 hereof, the following parts may be omitted in such printing, to wit:

Praecipe of appearance for Frederick A. Kribs found on page 27; U. S. Exhibits 164 to 167, inclusive, found on pages 513 to 526, inclusive; Government Exhibit 26 found on pages 715 to 716, inclusive; certificate in blank of Stephen Sanford, found on page 733, and the title of the case except in the original bill, the amended bill, and the opinion of the Court; and where the title is so omitted there is to

be printed in place thereof "(Title of Court and Cause)."

Dated April 3d, 1911.

JOHN McCOURT,
United States Attorney for the District of Oregon.

JOHN LIND,
A. UELAND,
JNO. M. GEARIN,
Solicitors and Counsel for Linn and Lane Timber Company, C. A. Smith and C. J. Swanson.

ALBERT H. TANNER,
Solicitor and Counsel for F. A. Kribs.

[Endorsed]: No. 1972. In the Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff, vs. Chas. A. Smith, Chas. J. Swanson et al., Defendants. Stipulation. Filed Apr. 5, 1911. F. D. Monckton, Clerk.

(Title of Court and Cause.)

Order Extending Time to File Transcript of Record.

Now on this day comes the complainant by its attorney, Mr. John McCourt, United States Attorney for said District of Oregon, and defendants Charles A. Smith, Charles J. Swanson, Linn & Lane Timber Company and Frederick A. Kribs, by Mr. John M. Gearin, Mr. A. Ueland and Mr. A. H. Tanner, of counsel, and thereupon this cause comes on to be heard upon motion of complainant and said defendants for an extension of time in which to file a transcript herein in the United States Circuit Court of Appeals for the Ninth Circuit, and, by consent of Counsel, it is ordered that the time heretofore

granted in which to file said transcript of record in said United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to June 1st, 1911.

Dated March 27th, 1911.

WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 1972—C. C. A. No. 3319. In the Circuit Court of the United States, for the District of Oregon. United States of America, Plaintiff, vs. Chas. A. Smith, Chas. J. Swanson et al., Defendants. Order Extending Time to File Transcript. Filed Apr. 5, 1911. F. D. Monckton, Clerk.

Citation on Appeal [Original].

No. 3319.

United States of America,
District of Oregon,—ss.

To United States of America, Greeting:

Whereas, the Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the Circuit Court of the United States for the District of Oregon, in your favor, and has given the security required by law; you are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree

should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 7th day of March, in the year of our Lord, one thousand nine hundred and eleven.

R. S. BEAN,
Judge. [1*]

Due service of the foregoing Citation on appeal is hereby admitted, March 7th, 1911.

JOHN McCOURT,
U. S. Attorney.

[Endorsed]: No. 3319. United States Circuit Court, District of Oregon. United States of America, Complainant, vs. C. A. Smith et al., Defendants. Citation on Appeal. Filed March 7, 1911. G. H. Marsh, Clerk.

(Title of Court and Cause.)

Citation on Appeal [Original].

United States of America,
District of Oregon,—ss.

To C. A. Smith, Frederick A. Kribs, Charles J. Swenson, O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkinds, Charles Wiley, William W. Billings and Linn & Lane Timber Company, Defendants Above Named, Greeting:

*Page-number appearing at foot of page of original Certified Record.

Whereas, The United States of America, complainant above named, has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the Circuit Court of the United States for the District of Oregon in the above-entitled suit, in your favor, **[2]** and has given the security required by law;

YOU ARE, therefore, hereby cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand at Portland in said District this 11th day of March in the year of our Lord, one thousand nine hundred and eleven.

R. S. BEAN,
Judge. **[3]**

United States of America,
District of Oregon,—ss.

Due, legal and timely service of the within Citation on Appeal is hereby accepted at Portland, Oregon, this 11th day of March, 1911.

JNO. M. GEARIN,
Solicitor for Defendants Linn & Lane Timber Co., C. A. Smith, C. J. Swanson.

United States of America,
District of Oregon,—ss.

Due, legal and timely service of the within Citation on Appeal is hereby accepted at Portland, Ore-

gon, this 11 day of March, 1911.

A. H. TANNER,

Solicitor for Defendant Frederick A. Kribs.

United States of America,
District of Oregon,—ss.

Due, legal and timely service of the within Citation on Appeal is hereby accepted at Portland, Oregon, this 11 day of March, 1911.

L. H. TARPLEY,

Solicitor for Defendants Samuel D. Pickens, Joseph H. Steingrandt and Alexander Gould.

United States of America,
District of Oregon,—ss.

Due, legal and timely service of the within Citation an Appeal is hereby accepted at Portland, Oregon, this —— day of ————, 1911.

————————, [4]

United States of America,
District of Oregon,—ss.

I, John McCourt, United States Attorney for the District of Oregon, being first duly sworn, depose and say that Honorable Percy R. Kelly is attorney and solicitor of record in the above-entitled cause, of the within named defendants: O. Judd Mealey, Will Mealey, J. A. Thompson, Richard F. Malone, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Sidney H. Scanland, Richard D. Watkinds and Charles Wiley; that the said Percy R. Kelly does not reside in the City of Portland, Oregon, but is a resident of Albany, Linn County, Oregon; that he did not endorse upon his appearance or answer or other plead-

ings herein, a designation of the place in Portland where notices and copies in said suit might be served upon him; that I did on this day deposit with the clerk of the Circuit Court of the United States for the District of Oregon, a true copy of the within and foregoing Citation on Appeal herein, for the said Percy R. Kelly, with directions to said clerk to transmit or deliver the same to the said Percy R. Kelly.

[Seal] JOHN McCOURT,
United States Attorney for Oregon.

Subscribed and sworn to before me this 11th day of March, 1911.

ROBERT F. MAGUIRE,
Notary Public for Oregon. **[5]**

[Endorsed]: No. 3319. In the Circuit Court of the United States for the District of Oregon. United States of America, Complainant, vs. C. A. Smith et al., Defendants. Citation on Appeal. Filed March 14, 1911. G. H. Marsh, Clerk. **[6]**

In the Circuit Court of the United States for the District of Oregon.

April Term, 1908.

BE IT REMEMBERED, that on the 25th day of May, 1908, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit: **[7]**

[Bill of Complaint.]

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD MEALEY, WILL MEALEY, J. A. THOMPSON, GEORGE F. MEALEY, RICHARD F. MALONE, WILLIAM J. LAWRENCE, ALEXANDER GOULD, JOHN J. GILLILAND, LOUIS MAYNARD, JOSEPH O. MICKALSON, JAMES W. ROZELL, JOHN THOMAS PARKER, SAMUEL D. PICKENS, SIDNEY H. SCANLAND, JOSEPH H. STEINGRANDT, CORNELIUS N. TUTHILL, RICHARD D. WATKINDS, CHARLES WILEY, FRED WODTLI and WILLIAM W. BILLINGS,
Defendants.

To the Honorable Judges of the Circuit Court of the United States of America, for the District of Oregon, in Chancery Sitting:

Your orator, the United States of America, by and under the direction of Attorney General of the United States, brings this bill in equity against the above-named defendants and each of them, and thereupon your orator complains of said defendants respectively and shows unto your Honors:

I.

That the complainant is now and was until the dates and times herein mentioned, the owner of the following described lands and premises, situate in the County of Linn, State and District of Oregon, and had the full legal title thereto at all said dates and times prior to the ninth (9th) day of July, 1902, and had the full legal [8] title to a portion of said lands as hereinafter shown up until August twelfth (12th) 1902, which said lands were, until the times herein mentioned, part of the public domain of the United States of America, and are particularly bounded and described as follows: The southeast quarter (SE. ¼), the northeast quarter (NE. ¼), and the southwest quarter (SW. ¼) section twenty-six (26) township fourteen (14) south, range two (2) east of the Willamette meridian; the east half of the east half and the west half of the northwest quarter and the west half of the southwest quarter (E. ½ E. ½, W. ½ NW. ¼, W. ½ SW. ¼) section ten (10), township fourteen south (14 S) range three (3) east of the Willamette meridian, and the southwest quarter of the southwest quarter (SW. ¼ SW. ¼), south half of the southwest quarter (S. ½ SW. ¼), northwest quarter of the southwest quarter (NW. ¼ SW. ¼), north half of the northeast quarter (N. ½ NE. ¼), southeast quarter of northeast quarter (SE. ¼ NE. ¼) and the northeast quarter of the southeast quarter (NE. ¼ SE. ¼) of section eleven (11), and the west half of the west half (W. ½ W. ½) of section twelve (12) and the northwest quarter of the northwest quarter of section seventeen (17), township

fourteen (14) south, range three (3) east of the Willamette meridian; and the west half of the northeast quarter (W. ½ NE. ¼), northeast quarter of the northeast quarter (NE. ¼ NE. ¼), south half of the southeast quarter (S. ½ SE. ¼) and lots three (3) and four (4) section eighteen (18), and east half of the southwest quarter (E. ½ SW. ¼), south half of southeast quarter (S. ½ SE. ¼) of section twenty (20), and the northwest quarter (NW. ¼), west half of southwest quarter (W. ½ SW. ¼), northeast quarter southwest quarter (NE. ¼ of SW. ¼), northwest quarter of southeast quarter (NW. ¼ SE. ¼), west half of northeast quarter (W. ½ NE. ¼), southeast quarter of the northeast quarter (SE. ¼ NE. ¼), and the northeast quarter southeast quarter (NE. ¼ of SE. ¼) of section twenty-two (22); and the east half of the northwest quarter (E. ½ NW. ¼), southwest quarter of northwest quarter (SW. ¼ NW. ¼) and southwest quarter northeast quarter (SW. ¼ NE. ¼) of section [9] twenty-four (24) and northwest quarter of northwest quarter (NW. ¼ NW. ¼) of section twenty-seven (27) and west half of northeast quarter (W. ½ of NE. ¼), northeast quarter of northeast quarter (NE. ¼ NE. ¼) northwest quarter (NW. ¼), north half of southeast quarter (N. ½ SE. ¼), and the north half of the southwest quarter (N. ½ SW. ¼) of section twenty-eight (28), in township fourteen (14) south, range four (4) east of the Willamette meridian.

II.

That from and after the twelfth day of August, 1902, the complainant still continued to be, and is

now, the owner of the equitable title to all of said above-described lands.

III.

Your orator further shows unto your Honors that some time prior to the month of August, 1900, and for many years prior thereto, the above-described lands in said Linn County, State and District of Oregon, were part of the public domain of the United States and subject to entry and sale in conformity with the land laws of the United States.

IV.

Your orator further shows unto your Honors that some time prior to the month of May, 1900, the above-named defendants Frederick A. Kribs, C. A. Smith, Charles J. Swenson, O. Judd Mealey, Will Mealey and John O. Thompson together with other persons to your orator unknown, entered into a conspiracy and agreement to defraud the Government of the United States out of the title to the above-described lands, and in and by said conspiracy and agreement it was understood and agreed that the said defendants O. Judd Mealey, Will Mealey and John O. Thompson should solicit and procure persons to make applications and entries, together with and in addition to certain of themselves upon the lands above described, under the Act of Congress of June third (3d) 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and that the said O. Judd Mealey, Will Mealey and John O. Thompson should, prior [10] to procuring and obtaining such persons to file upon

said lands, as aforesaid, enter into an agreement with each and every of said persons in and by which said agreement each of said persons so filing on said lands promised and agreed that the title which he or she might acquire from the Government of the United States should inure to the *m*enefit of the said defendants Frederick A. Kribs, C. A. Smith, Charles J. Swenson, or some of them, and that as soon as said applicants should be permitted to enter said lands so to be filed upon by him or her and a certificate should issue to such applicant, showing that such applicant had been permitted to enter said lands so filed upon and had made payment in full therefor, as required by law, then such applicant would thereupon and thereafter execute and deliver to the said defendants Frederick A. Kribs, C. A. Smith and Charles J. Swenson or some of them, a warranty deed, conveying said lands to the said Frederick A. Kribs, C. A. Smith or Charles J. Swenson or some of them, and the said defendants O. Judd Mealey, Will Mealey and John O. Thompson should promise each of said applicants upon behalf of themselves and said defendants Frederick A. Kribs, C. A. Smith and Charles J. Swenson to pay the respective applicants all expenses of filing and proof upon the lands applied for by such applicants and pay the price required to be paid the United States for said lands, all of such payments to be made by the said defendants named in this paragraph at the time of proof and cash entri*ed* should be made.

V.

That thereafter, on and between the eighth (8th)

day of May, 1900, and the nineteenth (19th) day of July, 1900, pursuant to said unlawful conspiracy and agreement, hereinafter set forth, the defendants O. Judd Mealey, Will Mealey and John A. Thompson solicited and procured the defendants hereinafter named to make applications to purchase and enter the lands hereinafter described, under the Act of Congress of June third (3d), 1878, providing for the sale of timber lands in the State of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, [11] Oregon, and the said defendants O. Judd Mealey, and John A. Thompson each also made an application to purchase and enter the hereinafter described lands under said Act above mentioned; and, pursuant to said unlawful conspiracy, each of said applicants to purchase and enter said lands filed a statement in duplicate verified by the oath of *s*ach applicant, as required by law, and all of said applications were filed at the United States Land Office at Roseburg, Oregon, on the dates and in the manner hereinafter set forth:

Timber and Stone Sworn Statement No. 1143, by Richard F. Malone, for the northwest quarter (NW. ¼) of section twenty-two (22), township fourteen (14) south, range four (4) east of Willamette meridian, filed July twelfth (12th) 1900;

Timber and Stone Sworn Statement No. 1146, by William J. Lawrence, for the east half of the southwest quarter (E. ½ SW. ¼) and the south half of the southeast quarter (S. ½ S. E. ¼) of section twenty (20), township fourteen (14) south, range (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1144, by Alexander Gould for the east half of the northwest quarter (E. ½ NW. ¼) and the southwest quarter of the northwest quarter (SW. ¼ NW. ¼) and the southwest quarter of the northeast quarter (SW. ¼ NE. ¼) of section twenty-four (24), township fourteen (14) south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1150, by John J. Gilliland, for the northwest quarter (NW. ¼) of section twenty-eight (28) township fourteen (14) south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1150, by Louis Maynard, for the west half of the southwest quarter (W. ½ SW. ¼) and the northeast quarter of the southwest quarter (NE. ¼ SW. ¼) and the northwest quarter of the southeast quarter (NW. ¼ SE. ¼) of section twenty-two (22), township fourteen (14) south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1023, by O. Judd Mealey, for the southwest quarter (SW. ¼) of section twenty-six (26) township fourteen (14) south, range four (4) east of the Willamette meridian, filed May fifteenth (15th), 1900;

Timber and Stone Sworn Statement No. 1106, by Joseph O. Mickalson, for the west half of the East half (W. ½ E.½) of section ten (10), township fourteen south, range three (3) east of the Willamette meridian, filed June 14th (fourteenth), 1900;

Timber and Stone Sworn Statement No. 1151m, by

James W. Rozell, for the north half of the southeast quarter (N. ½ SE. ¼) and the north half of the southwest quarter (N. ½ SW. ¼) of section twenty-eight (28), township fourteen (14) south, range four (4) east of the Willamette meridian, filed July thirteenth (13th), 1900;

Timber and Stone Sworn Statement No. 1107, by John Thomas Parker, for the north half of the northeast quarter (N. ½ NE. ¼) and the southeast quarter of the northeast quarter (SE. ¼ NE. ¼) and the northeast quarter of the southeast quarter (NE. ¼ SE. ¼) of section eleven (11) township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14), 1900; **[12]**

Timber and Stone Sworn Statement No. 1111, by Samuel D. Pickens, for the west half of the southwest quarter (W. ½ SW. ¼) and the southeast quarter of the southwest quarter (SE. ¼ SW. ¼) and the southwest quarter of the southeast quarter (SW. ¼ SE. ¼) of section eleven (11) township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14th), 1900;

Timber and Stone Sworn Statement No. 1145, by Sidney H. Scanland, for the west half of the northeast quarter (W. ½ NE. ¼) and the northeast quarter or the northeast quarter (NE. ¼ NE. ¼) of section twenty-eight (28), and the northwest quarter of the northwest quarter (NW. ¼ NW. ¼) of section twenty-seven (27) township fourteen (14) south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1108, by

Joseph Steingrandt, for the east half of the east half (E. ½ E. ½) of section ten (10), township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14th), 1900;

Timber and Stone Sworn Statement No. 1022, by John A. Thompson, for the northeast quarter (NE. ¼) of section twenty-six (26), township fourteen (14) south, range two (2) east of the Willamette meridian, filed May fifteenth (15th), 1900;

Timber and Stone Sworn Statement No. 1165, by Cornelius N. Tuthill, for the south half of the southeast quarter (S. ½ SE. ¼) and lots three (3) and four (4), section eighteen (18), township fourteen (14) south, range four (4) east of the Willamette meridian, filed July nineteenth (19th), 1900;

Timber and Stone Sworn Statement No. 1148, by Richard C. Watkinds, for the west half of the northeast quarter (W. ½ NE. ¼) and the southeast quarter of the northeast quarter (SE. ¼ NE. ¼) and the northeast quarter of the southeast quarter (NE. ¼ SE. ¼) of section twenty-two (22) township fourteen south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1110, by Charles Wiley, for the west half of the west half of section 12 (W. ½ W. ½ Sec. 12) township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14th), 1900;

Timber and Stone Sworn Statement No. 1004, by Fred Wodtli, for the southeast quarter (SE. ¼) of section twenty-six (26) township fourteen (14) south, range two (2) east of the Willamette meridian,

filed May eighth (8th), 1900;

Timber and Stone Sworn Statement No. 1105, by William W. Billings, for the northwest quarter of the northwest quarter (NW. ¼ NW. ¼) of section seventeen (17) and the north half of the northeast quarter (N. ½ NE. ¼) and the southwest quarter of the northeast quarter (SW. ¼ NE. ¼) of section eighteen (18) township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14th), 1900.

VI.

Your orator further shows unto your Honors and alleges: That pursuant to said unlawful conspiracy and agreement each of said applicants to purchase a*b*d enter timber lands, mentioned and described in the last preceding paragraph of this Bill, with the exception of the defendants O. Judd Mealey and John A. Thompson, prior to making **[13]** and filing his or her application to purchase and enter said lands, made and entered into a contract and agreement with the said defendants O. Judd Mealey, Will Mealey and John A. Thompson, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants Frederick A. Kribs, C. A. Smith and Charles J. Swenson whom the said O. Judd Mealey, Will Mealey and John A. Thom*s*pson then and there represented and acted for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied *g*or to thereupon and thereafter transfer, convey and set over said lands by warranty deed to the said Frederick A. Kribs, C. A. Smith and Charles

J. Swenson, or some of them, and the said defendants O. Judd Mealey, and John A. Thompson, prior to making their said applications and entries, hereinbefore mentioned, each entered into an agreement with the said defendants C. A. Smith and Frederick A. Kribs, in and by which the said O. Judd Mealey and John A. Thompson each promised and agreed, upon being permitted to enter said lands so applied for and filed upon by him, to transfer, convey and set over said lands by warranty deed to the said defendants Frederick A. Kribs, C. A. Smith or Charles J. Swenson; and in consideration of the foregoing agreements made by such applicants except the said O. Judd Mealey and John A. Thompson, the said O. Judd Mealey, Will Mealey and John A. Thompson promised and agreed to pay to each of said applicants the sum of Fifty Dollars ($50.00) and pay all the expenses of filing and making final proof thereon, together with the purchase price of the lands applied for by each of said applicants; and the said defendant Frederick A. Kribs promised and agreed to pay all the expenses of filing and making final proof, together with the purchase price of the lands included in the respective applications and entries of the said O. Judd Mealey, and John A. Thompson.

And your orator further shows unto your Honors and alleges: That each of said applicants hereinbefore mentioned and described and upon the dates hereinbefore set forth, filed a written statement in duplicate which is hereinbefore designated as "Timber [14] and Stone Sworn Statement," in which said written statement each of said applicants desig-

nated by legal subdivision the particular tract of land he or she desired to purchase, and set forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited, contained no mining or other improvements, nor, as such applicant verily believed, any valuable deposit of gold, silver, cinnabar, copper or coal, and that such applicant had made no other application under said Act, and that he or she did not apply to purchase the land above described on speculation, but in good faith to appropriate it to his or her own exclusive use and benefit, and that he or she had not directly or indirectly made any agreement in any way or manner with any person or persons whomsoever, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any persons except himself or herself, which said statement of each of said applicants was verified by the oath of the respective applicants before the Register or Receiver of the said Land Office at Roseburg, Oregon, or before some other officer authorized by law to administer such oath.

Your orator further shows unto your Honors and alleged: That upon the filing of said statements, as hereinbefore set forth, the Register of the said United States Land Office, at Roseburg, Oregon, posted a notice of each of said applicants, as required by law, and furnished each of said applicants a copy of such notice for publication, and the said defendants O. Judd Mealey, Will Mealey and John A. Thompson pursuant to said unlawful conspiracy and agreement hereinbefore mentioned, caused each of said notices

to be duly and regularly published in a newspaper, as required by law, and after the expiration of such application the said defendants O. Judd Mealey, Will Mealey and John A. Thompson furnished to the Register of said Roseburg Land Office satisfactory evidence that said notice of the application of each of said applicants had been duly published in *an* newspaper, as required by law, and procured each of said applicants to furnish satisfactory evidence to said Register that the said land included in each of said applications [15] was unfit for cultivation and valuable chiefly for its timber, and that said land was unoccupied and without improvements either mining or agricultural, and that it apparently contained no valuable deposit of gold, silver, cinnabar, copper or coal; and upon the submission of said evidence and proof so furnished and offered, and notwithstanding the facts as hereinbefore set forth, the officers of the said United States Land Office at Roseburg, Oregon, being ignorant thereof, and having no means of knowing or ascertaining the same, did receiver from each of said applicants the sum of $400.00 as payment for the lands described in said respective applications, under the said act of Congress of June third (3d), 1878, at the rate of $2.50 per acre, and permitted each of said applicants to enter the lands described in his or her respective applications, and issued to each of said applicants a certificate to the effect that such applicant had purchased the land described therein and had made payment in full therefor, as required by law, which said entries, payments and certificates were permitted, made and issued on the dates and in

the manner following, to wit:

Final Certificate Number 8510, Richard F. Malone, October ninth (9th), 1900;

Final Certificate Number 8516, William J. Lawrence, October ninth (9th), 1900;

Final Certificate Number 8508, Alexander Gould, October ninth (9th), 1900;

Final Certificate Number 8511, John J. Gilliland, October ninth (9th), 1900;

Final Certificate Number 8512, Louis Maynard, October ninth (9th), 1900;

Final Certificate Number 8419, O. Judd Mealey, October ninth (9th), 1900;

Final Certificate Number 8446, Joseph O. Mickalson, August twenty-seventh (27th), 1900;

Final Certificate Number 8517, James W. Rozell, October ninth (9th), 1900;

Final Certificate Number 8445, John Thomas Parker, August twenty-seventh (27th), 1900;

Final Certificate Number 8444, Samuel D. Pickens, August twenty-seventh (27th), 1900;

Final Certificate Number 8509, Sidney H. Scanland, October ninth (9th), 1900;

Final Certificate Number 8447, Joseph H. Steingrandt, August twenty-seventh (27th), 1900;

Final Certificate Number 8422, John A. Thompson, August sixteenth (16th), 1900;

Final Certificate Number 8513, Cornelius N. Tuthill, October ninth (9th), 1900;

Final Certificate Number 8522, R. C. Watkinds, October ninth (9th), 1900; **[16]**

Final Certificate Number 8443, Charles Wiley, Au-

gust twenty-seventh (27th), 1900;

Final Certificate No. 8416, Fred Wodtli, August sixteenth (16th), 1900; and

Final Certificate No. 8442, William W. Billings, August twenty-seventh (27th), 1911.

VII.

And your orator further shows unto your Honors that pursuant to said unlawful conspiracy to defraud the United States out of its said lands as aforesaid and pursuant to said unlawful agreements entered into by the said defendants O. Judd Mealey, Will Mealey and John A. Thompson, with each of said applicants prior to making and filing applications for the purchase of the lands hereinbefore described, the said O. Judd Mealey, Will Mealey and John A. Thompson, at the time each of said applicants made proof before the officers of the United States Land Office at Roseburg, Oregon, as aforesaid, paid and advanced all the expenses and fees of each of said applicants and their respective witnesses, and paid, advanced and furnished the purchase money for the lands included in the application of each of said applicants except that the expenses, fees and purchase price of the lands included in the applications of the said O. Judd Mealey and John A. Thompson were paid by the defendant Frederick A. Kribs, and in truth and in fact the said Frederick A. Kribs, C. A. Smith, and Charles J. Swenson furnished and advanced all the moneys with which the fees, expenses and purchase moneys of the said applicants upon their said respective applications and entries, were paid; and thereupon each of said applicants executed

and delivered to the defendant Frederick A. Kribs a warranty deed purporting to transfer, convey and set over unto the said defendant, Frederick A. Kribs, the title to the lands included *in* described in their respective applications and entries; and in each of said deeds the applicants who were married were joined by their respective wives or husbands.

VIII.

And your orator further shows unto your Honors and alleges, that each of the applications and entries hereinbefore mentioned were made by the respective applicants and entrymen and entrywoman [17] as agents of and for the use and benefit of the said defendants C. A. Smith, Frederick A. Kribs and Charles J. Swenson.

IX.

And your orator further shows unto your Honors and alleges: That thereafter the land officers of said United States Land Office at Roseburg, Oregon, transmitted to the General Land Office the papers and testimony relating to each of said applications, and thereafter, notwithstanding the facts hereinbefore mentioned and set forth, the President of the United States and the officers of the Department of the Interior and the General Land Office of the United States of America, being ignorant thereof and having no means of ascertaining the same, did on the ninth (9th) day of July, 1902, and the twelfth (12th) day of August, 1902, respectively, issue to each of said applicants to purchase and enter timber lands as hereinbefore set forth, a patent purporting to convey to the respective applicants the land de-

scribed in their respective applications.

X.

And your orator further avers that the false and fraudulent representations made by the defendants, as hereinbefore set forth, were all made with the intent to deceive and defraud the United States out of the use of, title to and possession of the lands hereinbefore described, and that your complainant relied upon said false and fraudulent representations so made as aforesaid, and by reason of such false and fraudulent representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be cancelled and annulled and held for naught.

XI.

And your orator further shows unto your Honors, that all of said lands patented to the defendants as hereinbefore set forth, were applied for, entered and filed upon by each of said defendants for the use and benefit of the defendants Frederick A. Kribs, C. A. Smith, and Charles J. Swenson and that before said lands were patented as aforesaid, to the respective defendants, each of said defendants conveyed the lands respectively patented to him or her, to the defendant **[18]** Frederick A. Kribs *and* hereinbefore alleged, and that the said defendant Frederick A. Kribs and his wife executed, acknowledged and delivered to the defendants C. A. Smith, on the twenty-fourth (24) day of October, 1904, a deed which purported to convey to the said C. A. Smith a three-quarter (3/4) undivided interest in and to the said

lands patented as hereinbefore set forth and on the twenty-eighth (28th) day of December, 1904, the defendant Frederick A. Kribs and his wife executed, acknowledged and delivered to the defendant Charles J. Swenson a deed, which purported to convey to the said Charles J. Swenson a one-quarter (¼) undivided interest in and to all of the lands patented to the respective defendants as hereinbefore set forth.

And your orator further charges and avers that in each and every instance, and as to each and every party in this paragraph and above mentioned, he took and received said respective title deeds with full notice of the fraud so perpetrated upon your orator as alleged in this Bill of Complaint and without having paid or given any consideration therefor except that the said defendants Frederick A. Kribs, C. A. Smith and Charles J. Swenson paid and advanced all the fees and expenses of the respective applicants to purchase and enter said lands and paid the purchase money received by the Government of the United States therefor, and paid to each of such applicants the sum of fifty dollars ($50.00) and further paid the said defendants O. Judd Mealey, Will Mealey and J. A. Thompson certain sums of money, the amounts of which are unknown to your orator, for soliciting and procuring said persons to apply for an *enter* and file upon said lands; all of which said payments were made under agreements made with the respective persons prior to the time at which said applications and entries were made; and said deeds were executed, acknowledged and delivered, taken and received, respectively by the said defend-

ants as mentioned hereinbefore in this Bill of Complaint for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore described, and each of such purchases and deeds is void in equity, and should be so declared **[19]** in favor of the United States and any purchases or pretended purchases, or incumbrances or liens, or pretended incumbrances or apparent liens alleged to be existing in law or in equity thereon, upon such lands or any portion thereof, should be declared fraudulent by the decree of this Honorable Court.

Forasmuch, therefore, as the complainant has been so as above alleged, cheated and defrauded out of its valuable lands and is remediless at and by the strict rules of the common law and is only relievable in a court of equity wherein such matters are fully cognizable and relievable, and to the end that the said defendants mentioned in the title to this Bill of Complaint and each of them may full, true, direct and certain answers make according to the best of their knowledge, information and belief to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your orator prays as follows: that the said defendants mentioned in the title to this Bill of Complaint may be held adjudged and decreed to have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to them or either of them; and that by reason of such frauds the patents issued to them or either of them or to others in their behalf, be declared void, and as such be held for naught and set

aside and the said land restored to the public domain of complainant; and that the defendants and each of them be held to pay into the treasury of complainant all such reasonable sums of money as it may be found necessary to lay out and expend in and about discovering and establishing the fraud, so as hereinbefore set forth and charged, and that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience and as such seem proper to this Honorable Court. May it please your Honors to grant unto the complainant the Writ of Subpoena issuing out of and under the seal of this Honorable Court to be directed to the said defendants mentioned in the title to this Bill of Complaint, commanding them and each of them by a certain day and under a certain penalty therein to be inserted to be and **[20]** appear before this Honorable Court, and then and there to answer the premises and further to stand to and abide such order as shall be agreeable to equity and good conscience, and your orator will ever pray.

CHARLES J. BONAPARTE,
Attorney General of the United States.

JOHN McCOURT,
United States Attorney for the District of Oregon.

United States of America,
District of Oregon,—ss.

I, John McCourt, United States Attorney for the District of Oregon, being duly sworn, depose and say that the facts set forth in the foregoing complaint are true as I verily believe.

JOHN McCOURT.

Subscribed and sworn to before me this twenty-fifth (25th) day of May, A. D. 1908.

[Seal] WALTER H. EVANS,
Notary Public for Oregon.

Bill of complaint. Filed May 25, 1908. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. **[21]**

And afterwards, to wit, on the 25th day of May, 1908, there was issued out of said court a Subpoena ad Respondendum, which with the returns of the Marshal as to the defendants C. A. Smith, Chas. J. Swenson, et al., and the defendant F. A. Kribs, in words and figures as follows, to wit: **[22]**

[Marshal's Return to Subpoena ad Respondendum.]

District of Oregon,—ss.

I hereby certify and return, that on the 25th day of May, 1908, I received the within writ and that after diligent search and inquiry from F. A. Kribs and S. A. D. Puter I am unable to find the within named defendants C. A. Smith, Chas. J. Swenson, Wm. J. Lawrence (dead), Alexander Gould, George F. Mealey (dead) within my district.

CHAS. J. REED,
United States Marshal. **[23]**

[Marshal's Return to Subpoena ad Respondendum.]

RETURN OF CIVIL PROCESS.

United States of America,
District of Oregon,—ss.

I hereby certify that on the 30th day of May, 1908, at Portland, Multnomah County, in said District, I duly served the within Subpoena ad Respondendum upon the therein named Frederick A. Kribs and by delivering to him personally and in person a true copy of said Subpoena ad Respondendum duly certified by Clerk Circuit Court, together with a copy of the Complaint in the within entitled action, duly certified to by John McCourt, U. S. Atty. for said District.

CHARLES J. REED,
United States Marshal.
By W. B. Griffith,
Deputy. **[24]**

(Title of Court and Cause.)

Subpoena ad Respondendum.

The President of the United States of America, to C. A. Smith, Frederick A. Kribs, Charles J. Swenson, O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tut-

hill, Richard D. Watkinds, Charles Wiley, Fred Wodtli and William W. Billings, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the city of Portland, in said District, on the first Monday of July next, which will be the 6th day of July, A. D. 1908, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein the United States of America is complainant, and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the Marshal of said District, or your Deputy, to make due service of this our Writ of Subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 25th day of May, in the year of our Lord, one thousand nine hundred and eight, and of the Independence of the United States, the one hundred and thirty-second.

[Seal U. S. Circuit Court, District of Oregon.]

G. H. MARSH,
Clerk.

MEMORANDUM PURSUANT TO EQUITY RULE NO. 12 OF THE SUPREME COURT OF THE UNITED STATES:

The defendant is to enter his appearance in the above-entitled suit in the Office of the Clerk of said

Court on or before the day at which the above writ is returnable; otherwise the complainant's Bill therein may be taken *pro confesso.*

[Endorsed]: No. 3319. In the Circuit Court of the United States, for the District of Oregon. In Equity. The United States vs. C. A. Smith et al. Subpoena ad Respondendum. Filed July 20, 1908. G. H. Marsh, Clerk U. S. Circuit Court District of Oregon. **[25]**

And afterwards, to wit, on Saturday, the 11th day of July, 1908, the same being the 78th judicial day of the regular April, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[28]**

[Order Dismissing Bill of Complaint as to Defendant Fred Wodtli.]

(Title of Court and Cause.)

Now, on this 11th day of July, 1908, the above-entitled suit coming on for hearing upon the motion of John McCourt, United States Attorney for the District of Oregon, for an order dismissing the bill of complaint in the above-entitled suit, as to the defendant Fred Wodtli, and as to the lands alleged in the complaint to have been patented to the said Fred Wodtli, and without prejudice to the rights of complainant as to the other defendants and other lands mentioned and described in said bill of complaint, and, it appearing upon the representations of said

John McCourt, United States Attorney for the District of Oregon, that said order should be made;

IT IS THEREFORE ORDERED AND DECREED that the said bill of complaint in the above-entitled suit be, and the same is hereby, dismissed as to the said defendant Fred Wodtli and as to the lands alleged in said bill of complaint to have been patented to the said Fred Wodtli, which said lands are described as follows:

"The Southeast ¼ of Section 26, Township 14 South, Range 2 east of the Willamette Meridian." **[29]**

But this order and decree is without prejudice to the rights of complainant as to the other defendants and the other lands mentioned and described in said bill of complaint herein.

CHAS. E. WOLVERTON,
Judge.

Filed July 11, 1908. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. **[30]**

And afterwards, to wit, on the 20th day of July, 1908, there was duly filed in said court a motion for order for nonresident defendants to appear and plead, in words and figures as follows, to wit: **[31]**

[Motion for Order Directing C. A. Smith et al. to Appear, etc.]

(Title of Court and Cause.)

Comes now the United States of America, the above-named complainant, by John McCourt, its at-

torney in and for the District of Oregon, and, based on the bill of complaint and affidavit herein filed, moves this Honorable Court to make and cause to be entered of record in this court an order directing C. A. Smith and Charles J. Swenson and Alexander Gould, defendants, to appear, plead, answer or demur to complainant's bill of complaint filed herein, by a day certain to be designated in such order.

JOHN McCOURT,
United States District Attorney.

Motion for Order. Filed July 20, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[32]**

And afterwards, to wit, on the 20th day of July, 1908, there was duly filed in said court an affidavit in support of motion for order for non-resident defendants to appear and plead, in words and figures as follows, to wit: **[33]**

[Affidavit in Support of Motion for Order Directing C. A. Smith et al. to Appear, etc.]

(Title of Court and Cause.)

United States of America,
State and District of Oregon,—ss.

I, John McCourt, being first duly sworn, depose and say: That I am United States Attorney for the District of Oregon, and that, on the 25th day of May, 1908, a bill of complaint was filed in the above-entitled court, in the above-entitled suit, wherein complainant seeks to cancel, annul and set aside the patents to certain lands situate in the State and Dis-

trict of Oregon, and described in the above-mentioned bill of complaint, which said patents had heretofore been issued by complainant to the defendants O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Wadkinds, Charles Wiley, Fred Wodtli and William W. Billings, respectively, and in and by said bill of complaint complainant further seeks to cancel, annul and **[34]** set aside all claims, rights, liens and conveyances of every nature asserted, held or made by the defendants, or any of them, in respect to or touching said lands described and set forth in said bill of complaint; that said patents to said lands, so issued to the defendants, as aforesaid, were obtained from complainant by said defendants through fraud and false and fraudulent representations, as more particularly appears in the bill of complaint on file herein, and to which reference is hereby made, and by such reference said bill of complaint is hereby made a part of this affidavit.

That said suit is one to enforce an equitable claim to the title to the said lands and real property described in said bill of complaint, and that the defendants C. A. Smith and Charles J. Swenson and Alexander Gould are not inhabitants or residents of the State or District of Oregon, and that none of them can be found in said State or District, and that none of said defendants has voluntarily appeared in said suit.

That on the said 25th day of May, 1908, there was issued out of the above-entitled court as subpoena ad respondendum, directed against all of the defendants named in the above-entitled suit, including the defendants last above named, which said subpoena was, on the 25th day of May, 1908, delivered to and placed in the hands of the United States Marshall for the District of Oregon for service upon all of said defendants named in the above-entitled suit, including said defendants C. A. Smith and Charles J. Swenson, and Alexander Gould, and that on the 20th day of July, 1908, the said United States Marshall for the District of Oregon, duly and regularly made return upon said subpoena ad respondendum, filed the same in the above-entitled court, and duly and regularly certified thereon that he had made diligent search and inquiry for said defendants C. A. Smith and Charles J. Swenson and Alexander Gould, and each of them, and had made inquiry of [35] persons likely to know the whereabouts of said last-named defendants, and that he was unable to find said defendants, or either or any of them, within the District or State of Oregon; that affiant is informed and believes that the above-named defendants, C. A. Smith and Charles J. Swenson, are now residents of and residing in Minneapolis, Hennepin County, State of Minnesota, and that the said Alexander Gould is a resident of and residing in San Luis Obispo, California.

That this affidavit and the motion herewith filed are made and filed for the purpose of obtaining an order of this Honorable Court directing that said defendants appear, plead, answer or demur herein

by a day certain, to be designated by this Honorable Court, and directing that said order be served upon said defendants, and each of them, as required by law and the rules of this Court.

That affiant is informed and believes that no person is in charge of or in possession of said reap property described in complainant's bill of complaint herein.

JOHN McCOURT,

Subscribed and sworn to before me this 20th day of July, 1908.

G. H. MARSH,
Clerk of the United States Court.

Filed July 20, 1908. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. **[36]**

And afterwards, to wit, on Monday, the 27th day of July, 1908, the same being the 91st judicial day of the regular April, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[37]**

[Marshall's Returns Re Service of Order, etc.]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed order for nonresident defendants to appear and plead on the therein-named Charles A. Smith and Charles J. Swenson, by handing to and leaving

a true and correct copy thereof with Charles A. Smith and Charles J. Swenson, each personally, at Minneapolis, in said District, on the eleventh day of August, A. D. *190*.

WILLIAM H. GRIMSHAW,
U. S. Marshal. **[38]**

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Bill of Complaint, referred to in Case #3319 on the therein-named Charles A. Smith, by handing to and leaving a true and correct copy thereof with Charles A. Smith, personally, at Minneapolis, in said District, on the eleventh day of August, A. D. 1908.

WILLIAM H. GRIMSHAW,
U. S. Marshal. **[39]**

(Title of Court and Cause.)

Order [Directing C. J. Swenson et al. to Appear, etc.].

Now, at this time comes on regularly to be heard the application of John McCourt, United States Attorney for the District of Oregon, appearing on behalf of complainant herein, for an order directing absent defendants C. A. Smith, Alexander Gould and Charles J. Swenson to appear and plead, answer or demur herein, by a day certain to be designated by the Court.

And it appearing to the Court that this suit is commenced by the United States of America, complainant, to enforce an equitable claim to real prop-

erty situated in the State and District of Oregon, the said suit being one to cancel and annul the patents to certain lands, which had heretofore been issued by complainant to defendants O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkinds, Charles Wiley, Fred Wodtli and William W. Billings, and that said C. A. Smith, Alexander Gould and Charles J. Swenson, defendants herein named, are not inhabitants of the District of Oregon, nor can they, or **[40]** either of them, be found in the State or District of Oregon, nor has either of them voluntarily appeared in and to said suit.

And the Court being of the opinion that said application should be granted;

IT IS HEREBY ORDERED that each of said defendants, Charles J. Swenson, Alexander Gould and C. A. Smith, shall appear, plead, answer or demur to the bill of complaint herein, within sixty days respectively, from the date upon which this said order may be served upon the defendants so required to appear, plead, answer or demur, at the term of this Court which may then be in session at the courtroom thereof, in the City of Portland, County of Multnomah and State of Oregon.

That certified copies of this order, prepared by the Clerk of the Court, under the seal of the Court, be served on the said C. A. Smith, Alexander Gould

and Charles J. Swenson by a United States Marshal for any District in the United States where said defendants may be found, and that there be served upon said defendant, C. A. Smith, with said certified copy of this order, a copy of plaintiff's bill certified as provided by the Rules of this Court.

Done in open court in the city of Portland, State of Oregon, this the 27th day of July, 1908.

CHAS. E. WOLVERTON,
Judge.

Filed July 27, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[41]**

And afterwards, to wit, on the 5th day of September, 1908, there was duly filed in said court a plea of Frederick A. Kribs et al., to the Bill of Complaint, in words and figures as follows, to wit: **[42]**

[Joint and Several Plea of Frederick A. Kribs et al. to Complaint.]

(Title of Court and Cause.)

The joint and several plea of Frederick A. Kribs, O. Judd Mealey, Will Mealey, John A. Thompson (in the bill called J. A. Thompson), Richard F. Malone, John J. Gilliland, Louis Maynard, Joseph O. Michaelson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Richard D. Watkinds and Charles Wiley, defendants to the bill of complaint of the complainant.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters and things in said bill of complaint contained to be true, in manner and form as the same are therein set forth, for plea nevertheless to said bill aver and say that on or about the 31st day of May, A. D. 1906, a corporation was duly organized and created under the general laws of the State of Minnesota by the name of Linn and Lane Timber Company, which said corporation by virtue of its charter and the general laws of said State of Minnesota, has at all times [43] had, and it now has, power and authority to buy, hold and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, and which said corporation has at all times had, and it now has, its principal place of business at the City of Minneapolis in said State of Minnesota, and it has at all times, had, and it now has, officers and directors who reside at said City of Minneapolis. That on or about the 25th day of June, A. D. 1906, said corporation executed, acknowledged and caused to be filed and recorded in the office of the Secretary of State for said State of Oregon, a power of attorney wherein and whereby Frederick A. Kribs, a citizen of the United States, and a citizen and resident of said State of Oregon, was constituted and appointed its attorney in fact and agent, with such power and authority that lawful and valid service of all writs, processes or summons in any action, suit, or proceeding against said corporation in any of the Courts of said State of Oregon, or in

any Court of the United States in said State of Oregon, might and could thenceforth at all times be made upon said corporation by service thereof upon said Kribs as such attorney in fact and agent. That on said 25th day of June, 1906, said corporation was authorized to engage in business within said State of Oregon, in accordance with the provisions of an Act of the Legislative Assembly of said State, approved February 16, 1903, entitled "An Act to Provide for the Licensing of Domestic Corporations and Foreign Corporations, etc.," and said corporation has ever since said date been authorized, and it is now authorized, to buy, hold and sell timber and other lands and tenements in said State of Oregon, and ever since said date the said Frederick A. Kribs has continued to be, and he now is, the attorney in fact and agent of said corporation, for the purpose **[44]** and with the power and authority aforesaid; and ever since said date the said Frederick A. Kribs has resided, and he now resides, at the city of Portland, in said State, and his place of business has ever since said date been, and it now is, at Number 330 Chamber of Commerce Building, in said City of Portland.

These defendants further aver and say that on and prior to the 4th day of June, A. D. 1906, by virtue of divers mesne deeds and conveyances from the several entrymen in said bill of complaint named, Charles A. Smith became and was seized and possessed of the undivided three-fourths, and Charles J. Swanson of the undivided one-fourth of all the right, title, interest and estate which complainant granted in and to the lands described in said bill of

complaint to the several entrymen in said bill named by the several patents in said bill mentioned and described; that while respectively so seized and possessed of said right, title, interest and estate in said land, the said Charles A. Smith, by a deed dated the 4th day of June, A. D. 1906, and duly executed by himself and Johanna A. Smith, his wife, and the said Charles J. Swanson, by a deed dated the 28th day of May, A. D. 1907, and duly executed by himself and Christine Swanson, his wife (which said deeds are recorded in the office of the Recorder of Conveyances for the County of Linn, in said State of Oregon), granted, bargained, sold and conveyed to the said Linn and Lane Timber Company all the right, title, interest and estate in and to all the lands described in said bill of which said Charles A. Smith and said Charles J. Swanson were then so respectively seized and possessed; that both said deeds were executed and delivered to said company a long time before the said bill of complaint was filed, to wit, before the 29th day of May, A. D. 1907, and the said Linn and Lane Timber Company has ever since been, and it now is, by virtue of said deeds, the owner [45] of all the rght, title, interest and estate which complainant granted to the several entrymen named in said bill of complaint by the several patents in said bill mentioned and described, and that ever since said 29th day of May, 1907, said company has claimed, and it now claims, to be seized of an estate in fee simple, absolute, in and to all said lands by virtue of the patents and deeds aforesaid. That by reason of the right, title, interest and estate in and to said

lands so acquired, held and claimed by said company, it, the said Linn and Lane Timber Company, is an indispensible party defendant herein, and for as much as the complainant has not made said company a party to said bill of complaint, said bill is deficient to answer the purposes of complete justice.

All of which matters and things these defendants do aver to be true and plead the same in abatement of complainant's said bill, and pray judgment of the Court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

L. H. TARPLEY,
PERCY R. KELLY,
ALBERT H. TANNER,
Of Counsel for said Defendants.

I certify that in my opinion the foregoing plea is well founded in point of law.

L. H. TARPLEY,
Of Counsel for said Defendants.

[46]

State of Oregon,
County of Multnomah,—ss.

Frederick A. Kribs, one of the defendants in the above-entitled cause, being duly sworn, says, that the foregoing plea is true in point of fact, and is not interposed for delay.

FREDERICK A. KRIBS.

Subscribed and sworn to before me this 5th day of September, A. D. 1908.

[Seal] L. H. TARPLEY,
Notary Public for Oregon.

Filed September 5, 1908. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. **[47]**

And afterwards, to wit, on Monday, the 5th day of October, 1908, the same being the 1st judicial day of the regular October term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[48]**

[Order Granting Fifteen Days Within Which to Serve and File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, on this 5th day of October, 1908, the above-entitled cause coming on to be heard upon the motion of John McCourt, United States Attorney for the District of Oregon, for fifteen days from this date within which to file an amended bill, or supplemental bill herein, as he may determine proper;

And it appearing to the Court that the defendants Frederick A. Kribs, O. Judd Mealey, Will Mealey, John A. Thompson (in the bill called J. A. Thompson), Richard F. Malone, John J. Gilliland, Louis Maynard, Joseph O. Michaelson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Richard D. Watkinds and Charles Wiley, heretofore interposed a plea herein alleging that the Linn & Lane Timber Company, a corporation, claims some right, title or interest in and to the subject matter of this suit and is an indispensible party herein, and the said John

McCourt representing that complainant desires to amend his said bill or file a supplemental bill herein bringing in said Linn & Lane Timber Company as a party [49] defendant but without admitting any of the allegations of said plea of said defendants herein to be true, except that conveyances have been placed of record in Linn County, Oregon, since the commencement of this suit purporting to convey the said lands in controversy herein to the said Linn & Lane Timber Company;

And it further appearing to the Court that the application of said complainants shall be allowed in order that whatever rights the said Linn & Lane Timber Company has in said lands, if any, may be litigated in this suit.

Therefore, it is ordered that complainant have fifteen days from this date within which to serve and file an amended or supplemental bill herein as may be determined upon by it.

CHARLES E. WOLVERTON,
Judge.

Filed October 5, 1908. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. [50]

And afterwards, to wit, on the 8th day of October, 1908, there was duly filed in said Court a plea of Charles A. Smith et al. to the Bill of Complaint, in words and figures as follows, to wit: [51]

[Joint and Several Plea of Charles A. Smith and Charles J. Swanson to Bill of Complaint.]

(Title of Court and Cause.)

The joint and several plea of Charles A. Smith (in the bill called C. A. Smith) and Charles J. Swanson (in the bill called Charles J. Swenson) to the bill of complaint of the complainant.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters and things in said bill of complaint contained to be true, in manner and form as the same are therein set forth, for plea nevertheless to said bill aver and say that on or about the 31st day of May, A. D. 1906, a corporation was duly organized and created under the general laws of the State of Minnesota by the name of Linn and Lane Timber Company, which said corporation by virtue of is charter and the general laws of said State of Minnesota, has at all times had, and it now has, power and authority to buy, hold and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, and which said corporation has at all [52] times had, and it now has, its principal place of business at the City of Minneapolis in said State of Minnesota, and it has at all times had, and it now has, officers and directors who reside at said City of Minneapolis. That on or about the 25th day of June, A. D. 1906, said corporation executed, acknowledged and caused to be filed and recorded in the office of the Secretary of State for said State of Oregon, a

power of attorney wherein and whereby Frederick A. Kribs, a citizen of the United States, and a citizen and resident of said State of Oregon, was constituted and appointed its attorney in fact and agent, with such power and authority that lawful and valid service of all writs, processes or summons in any action, suit, or proceeding against said corporation in any of the courts of said State of Oregon, or in any Court of the United States in said State of Oregon, might and could thenceforth at all times be made upon said corporation by service thereof upon said Kribs as such attorney in fact and agent. That on said 25th day of June, 1906, said corporation was authorized to engage in business within said State of Oregon, in accordance with the provisions of an Act of the Legislative Assembly of said State, approved February 16, 1903, entitled "An Act to Provide for the Licensing of Domestic Corporations and Foreign Corporations," etc., and said corporation has ever since said date been authorized, and it is now authorized, to buy, hold and sell timber and other lands and tenements in said State of Oregon, and ever since said date the said Frederick A. Kribs has continued to be, and he now is, the attorney in fact and agent of said corporation, for the purpose and with the power and authority aforesaid; and ever since said date the said Frederick A. Kribs has resided, and he now resides, at the city of Portland, in said State, and his place of business has ever since said date been, and it now is, at Number 330 Chamber of Commerce Building, in said city of Portland.

These defendants further aver and say that on and

prior to the 4th day of June, A. D. 1906, by virtue of divers mesne deeds and conveyances from the several entrymen in said bill of complaint named, [53] Charles A. Smith became and was seised and possessed of the undivided three-fourths, and Charles J. Swanson of the undivided one-fourth of all the right, title, interest and estate which complainant granted in and to the lands described in said bill of complaint to the several entrymen in said bill named by the several patents in said bill mentioned and described; that while respectively so seized and possessed of said right, title, interest and estate in said land, the said Charles A. Smith, by a deed dated the 4th day of June, A. D. 1906, and duly executed by himself and Johanna A. Smith, his wife, and the said Charles J. Swanson, by a deed dated the 28th day of May, A. D. 1907, and duly executed by himself and Christine Swanson, his wife (which said deeds are recorded in the office of the Recorder of Conveyances for the County of Linn, in said State of Oregon), granted, bargained, sold and conveyed to the said Linn and Lane Timber Company all the right, title, interest and estate in and to all the lands described in said bill of which said Charles A. Smith and said Charles J. Swanson were then so respectively seised and possessed; that both said deeds were executed and delivered to said Company a long time before the said bill of complaint was filed, to wit, before the 29th day of May, A. D. 1907, and the said Linn and Lane Timber Company has ever since been, and it now is, by virtue of said deeds, the owner of all the right, title, interest and estate which complainant granted to the

several entrymen named in said bill of complaint by the several patents in said bill mentioned and described, and that ever since said 29th day of May, 1907, said Company has claimed, and it now claims, to be seised of an estate in fee simple, absolute, in and to all said lands by virtue of the patents and deeds aforesaid. That by reason of the right, title, interest and estate in and to said lands so acquired, held and claimed by said Company, it, the said Linn and Land Timber Company, is an indispensible party defendant herein, and for as much as the complainant has not made said company a party to said bill of complaint, said bill is deficient to answer the purposes of complete justice.

All of which matters and things these defendants do aver to be true and plead the same in abatement of complainant's said bill **[54]** and pray judgment of the Court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

(Signed) JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
DOLPH, MALLORY, SIMON & GEARIN.
Of Counsel for said Defendants.

I certify that in my opinion the foregoing plea is well founded in point of law.

(Signed) A. UELAND,
Of Counsel for said Defendants. **[55]**

State of Minnesota,
County of Hennepin,—ss.

Charles J. Swanson, one of the defendants in the above-entitled cause, being duly sworn, says, that the foregoing plea is true in point of fact, and is not interposed for delay.

C. J. SWANSON.

Subscribed and sworn to before me, this 3d day of October, 1908.

W. M. JEROME,
Notary Public, Hennepin Co., Minn.

My commission expires June 26, 1914.

Notices and copies in the above-entitled cause may be served on each of the undersigned by delivering the same to John M. Gearin, Esq., at his office in the Mohawk Building in Portland, Oregon.

JOHN LIND,
A. UELAND,
W. W. JEROME,
Of Counsel for Said Defendants.

Service admitted Oct. 8, 1908.

JNO. McCOURT,
U. S. Attorney.

Filed October 8, 1908. G. H. Marsh, Clerk. [56]

And afterward, to wit, on Monday, the 19th day of October, 1908, the same being the 13th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [57]

[Order Allowing Ten Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, IT IS ORDERED that the plaintiff herein be, and it is hereby, allowed ten days' further time in which to file an amended Bill of Complaint or Supplemental Bill herein. **[58]**

And afterwards, to wit, on Thursday, the 29th day of October, 1908, the same being the 22d judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[59]**

[Order Allowing Five Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, IT IS ORDERED that the plaintiff herein be, and it is hereby, allowed five days' further time in which to file an Amended Bill of Complaint or Supplemental Bill herein. **[60]**

And afterwards, to wit, on Thursday, the 5th day of November, 1908, the same being the 28th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge

presiding—the following proceedings were had in said cause, to wit: **[61]**

[Order Allowing Five Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and the defendants C. A. Smith et al. by Mr. John M. Gearin, of counsel: Whereupon, on motion of said plaintiff, IT IS ORDERED that said plaintiff be, and it is hereby, allowed five days' further time in which to file an amended or supplemental Bill of Complaint herein. **[62]**

And afterwards, to wit, on the 16th day of November, 1908, there was duly filed in said court, an Amended Bill of Complaint, in words and figures as follows, to wit: **[63]**

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, P. JUDD MEALEY, WILL MEALEY, GEORGE F. MEALEY, RICHARD F. MALONE, J. A. THOMPSON, ALEXANDER GOULD, JOHN J. GILLILAND, LOUIS MAYNARD, JOSEPH O. MIKALSON, JAMES W. ROWELL, JOHN THOMAS PARKER, SAMUEL D. PICKENS, SIDNEY H. SCANLAND, JOSEPH

H. STEIGRANDT, CORNELIUS N. TUTHILL, RICHARD D. WATKINDS, CHARLES WILEY, and WILLIAM W. BILLINGS, and LINN & LANE TIMBER COMPANY,

Defendants.

Amended Bill of Complaint.

To The Honorable Judges of the Circuit Court of the United States of America for the District of Oregon, in Chancery Sitting:

Your orator, the United States of America, by and under the authority and direction of the Attorney General of the United States, and by leave of Court first had and obtained, brings this, its amended bill in equity, against the above-named defendants, and each of them, and thereupon your orator complains of said defendants respectively and shows unto your Honors:

I.

That the complainant was until the dates and times herein mentioned, the owner of the following described lands and premises, situate in the County of Linn, State and **[64]** District of Oregon, and had the full legal title thereto at all said dates and times prior to the ninth day of July, 1902, and had the full legal title to a portion of said lands as hereinafter shown up until August 12, 1902, which lands were, until the times herein mentioned, part of the public domain of the United States of America, and particularly bounded and described as follows:

The southeast quarter (SE. ¼), the northeast quarter (NE. ¼), and the southwest quarter (SW. ¼) of Section twenty-six (26), Township fourteen

(14) South, Range two (2) East of the Willamette Meridian; the east half of the east half (E. ½ E. ½) of Section ten (10), Township fourteen (14) South, Range three (3) East of the Willamette Meridian, and the southwest quarter of the southwest quarter (SW. ¼ SW. ¼), the south half of the southwest quarter (S. ½ SW. ¼), the northwest quarter of the southwest quarter (NW. ¼ SW. ¼), the north half of the northeast quarter (N. ½ NE. ¼), the southeast quarter of the northeast quarter (SE. ¼ NE. ¼), and the northeast quarter of the southeast quarter (NE. ¼ SE. ¼) of Section eleven (11), the west half of the west half (W. ½ W. ½) of Section twelve (12), and the northwest quarter of the northwest quarter (NW. ¼ NW. ¼) *p*f Section Seventeen (17), Township fourteen (14) South, Range three (3) East of the Willamette Meridian; the west half of the northeast quarter (W. ½ NE. ¼), the northeast quarter of the northeast quarter (NE. ¼ NE. ¼), the south half of the southeast quarter (S. ½ SE. ¼), and lots three (3) and four (4), Section eighteen (18), and the east half of the southwest quarter (E. ¼ SW. ¼), the south half of the southeast quarter (S. ½ SE. ¼) of Section twenty (20), the northwest quarter (NW. ¼), the west half of the southwest quarter (W. ½ SW. ¼), the northeast quarter of the southwest quarter (NE. ¼ SW. ¼), the northwest quarter of the southeast quarter (NW. ¼ SE. ¼), the west half of the northeast quarter (W. ½ NE. ¼), the southeast quarter of the northeast quarter (SE. ¼ NE. ¼), and the northeast quarter of the southeast quarter (NE. ¼ SE. ¼) of Section twenty-two (22), the east half of the

northwest quarter (E. ½ NW. ¼), the southwest quarter of the northwest quarter (SW. ¼ NW. ¼), and the southwest quarter of the northeast quarter (SW. ¼ NE. ¼) of Section twenty-four (24), the northwest quarter of the northwest quarter (NW. ¼ NW. ¼) of Section twenty-seven (27), the west half of the northeast quarter (W. ½ NE. ¼), the northeast quarter of the northeast qiarter (NE. ¼ NE. ¼), the northwest quarter (NW. ¼), the north half of the southeast quarter (N. ½ SE. ¼), and the north half of the southwest quarter (N. ½ SW. ¼), of Section twenty-eight (28), in Township fourteen (14) South, Range four (4) East of the Willamette Meridian.

II.

That from and after the 12th day of August, 1902, the complainant still continued to be, and is now, the owner of the equitable title to all of said above described lands. **[65]**

III.

Your orator further shows unto your Honors that some time prior to the month of August, 1900, and for many years prior thereto, the above-described lands in said Linn County, State and District of Oregon, were part of the public domain of the United States and subject to entry and sale in conformity with the land laws of the United States.

IV.

Your orator further shows unto your Honors that some time during the year 1900, and prior to the month of May, the above-named defendants, Frederick A. Kribs, C. A. Smith, Charles J. Swanson, O. Judd Mealey, Will Mealey and John A. Thomp-

son, together with other persons to your orator unknown, entered into a conspiracy and agreement to defraud the Government of the United States out of the title to the above-described lands, and in and by said conspiracy and agreement it was understood and agreed that the said defendants, O. Judd Mealey, Will Mealey and John A. Thompson should solicit and procure persons to make applications and entries, together with and in addition to certain of themselves upon the lands above described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and that the said O. Judd Mealey, Will Mealey and John A. Thompson should, prior to procuring and obtaining such persons to file upon said lands, as aforesaid, enter into an agreement with each and every of said persons in and by which said agreement each of said persons so filing on said lands promised and agreed that the title which he or she might acquire from the Government of the United **[66]** States should inure to the benefit of the said defendants Frederick A. Kribs, C. A. Smith, Charles J. Swanson or some of them, and that as soon as said applicants should be permitted to enter said lands so to be filed upon by him or her and a certificate should issue to such applicant, showing that such applicant had been permitted to enter said lands so filed upon and had made payment in full therefor, as required by law, then such applicant would thereupon and thereafter execute and deliver to the said defendant Frederick A. Kribs, C. A. Smith and Charles J. Swanson or

some of them, a warranty deed, conveying said lands to the said Frederick A. Kribs, C. A. Smith or Charles J. Swanson or some of them, and the said defendants, O. Judd Mealey, Will Mealey, and John A. Thompson, should promise each of said applicants upon behalf of themselves and said defendants Frederick A. Kribs, C. A. Smith, and Charles J. Swanson, to pay the respective applicants all expenses of filing and proof upon the lands applied for by such applicants and pay the price required to be paid the United States for said lands, all of such payments to be made by the said defendants named in this paragraph at the time proof and cash entries should be made.

V.

That thereafter, on and between the 8th day of *My,* 1900, and the 19th day of July, 1900, pursuant to said unlawful conspiracy and agreement, hereinbefore set forth, the defendants O. Judd Mealey, Will Mealey and John A. Thompson, solicited and procured the defendants hereinafter named, together with *on* William J. Lawrence, since deceased, to make applications to purchase and enter the land hereinafter described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the **[67]** States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and the said defendants O. Judd Mealey, and John A. Thompson, each also made an application to purchase and enter the hereinafter described lands under said Act above mentioned; and, pursuant to said unlawful conspiracy, each of said applicants to purchase and enter

said lands filed a statement in duplicate verified by the oath of each applicant, as required by law, and all of said applications were filed at the United States Land Office at Roseburg, Oregon, on the dates and in the manner hereinafter set forth:

Timber and Stone Sworn Statement No. 1143, by Richard F. Malone, for the northwest quarter of section 22, township 14 south, range 4 east of Willamette Meridian, filed July 12, 1900;

Timber and Stone Sworn Statement No. 1146, by William J. Lawrence, for the east ½ of the southwest ¼ and the south ½ of the southeast ¼ of section 20, township 14 south, range 4 east of the Willamette Meridian, filed July 12th, 1900;

Timber and Stone Sworn Statement No. 1144, by Alexander Gould, for the east ½ of the northwest ¼ and the southwest ¼ of the northwest ¼ and the southwest ¼ of the northeast ¼ of section 24, township 14 south, range 4 east of the Willamette Meridian, filed July 12th, 1900;

Timber and Stone Sworn Statement No. 1142, by John J. Gilliland, for the northwest ¼ of section 28, township 14 south, range 4 east of the Willamette Meridian, filed July 12, 1900;

Timber and Stone Sworn Statement No. 1150, by Louis Maynard, for the west ½ of the southwest ¼ and the northeast ¼ pf the southwest ¼ and the northwest ¼ of the southeast ¼ of section 22, township 14 south, range 4 east of the Willamette Meridian, filed July 12th, 1900;

Timber and Stone Sworn Statement No. 1023, by O. Judd Mealey, for the southwest ¼ of section 26,

township 14 south, range 2 east of the Willamette Meridian, filed May 15, 1900;

Timber and Stone Sworn Statement No. 1106, by Joseph O. Mikalson, for the west ½ of the east ½ of section 10, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1151, by James W. Rozell, for the north ½ of the southeast ¼ and the north ½ *fo* the southwest ¼ of section 28, township 14 south, range 4 east of the Willamette Meridian, filed July 13, 1900; [68]

Timber and Stone Sworn Statement No. 1107 by John Thomas Parker, for the north ½ of the northeast ¼ and the southeast ¼ of the northeast ¼ and northeast ¼ of the southeast ¼ of section 11, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1111, by Samuel D. Pickens, for the west half of the southwest ¼ and the southeast ¼ of the southwest ¼ and the southwest ¼ of the southeast ¼ of section 11, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1145, by Sidney H. Scanalan, for the west ½ of the northeast ¼ and the northeast ¼ of the northeast ¼ of section 28, and the northwest ¼ of the northwest ¼ of section 27, township 14 south, range 4 east of the Willamette Meridian, filed July 12, 1900;

Timber and Stone Sworn Statement No. 1108, by Joseph Steingrandt, for the east ½ of the east ½ of section 10, township 14 south, range 3 east of the

section 10, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1022, by John A. Thompson, for the northeast 1/4 of section 26, township 14 south, range 2 east of the Willamette Meridian, filed May 15, 1900;

Timber and Stone Sworn Statement No. 1165, by Cornelius N. Tuthill, for the south 1/2 of the southeast 1/4 and lots 3 and 4, section 18, township 14 south, range 4 east of the Willamette Meridian, filed July 19, 1900;

Timber and Stone Sworn Statement No. 1148, by Richard C. Watkinds, for the west 1/2 of the northeast 1/4 and the southeast 1/4 of the northeast 1/4 and the northeast 1/4 of the southeast quarter of section 22, township 14 south, range 4 east of the Willamette Meridian, filed July 12, 1900;

Timber and Stone Sworn Statement No. 1110, by Charles Wiley, for the west half of the west 1/2 of section 12, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1105, by William W. Billings, for the northwest 1/4 of the northwest 1/4 of section 17, and the north 1/2 of the northeast 1/4 and the southwest 1/4 of the northwest 1/4 of section 18, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900.

VI.

Your orator further shows unto your Honors and alleges: That pursuant to said unlawful conspiracy and agreement each of said applicants to purchase and enter timber lands, mentioned and described in the last preceding paragraph of this Bill, with the

exception of the defendants O. Judd Mealey and John A. Thompson, prior to **[69]** making and filing his or her application to purchase and enter said lands made and entered into a contract and agreement with the said defendants O. Judd Mealey, Will Mealey, and John A. Thompson, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants Frederick A. Kribs, C. A. Smith, and Charles J. Swanson, whom the said O. Judd Mealey, Will Mealey and John A. Thompson then and there represented and acted for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied for to thereupon and thereafter transfer, convey and set over said lands by warranty deed to the said Frederick A. Kribs, C. A. Smith and Charles J. Swanson or some of them, and the said defendants O. Judd Mealey, and John A. Thompson, prior to making their said applications and entries, hereinbefore mintioned, each entered into an agreement with the said defendants, C. A. Smith and Frederick A. Kribs, in and by which the said O. Judd Mealey and John A. Thompson each promised and agreed, upon being permitted to enter said lands so applied for and filed upon by him, to transfer, convey and set over said lands by warranty deed to the said defendants Frederick A. Kribs, C. A. Smith, or Charles J. Swanson; and in consideration of the foregoing agreements made by such applicants except the said O. Judd Mealey and John A. Thompson, the said O. Judd Mealey, Will Mealey and John A. Thompson, promised and agreed to pay each of

said applicants the sum of Fifty ($50.00) Dollars, and pay all the expenses of filing and making final proof thereon, together with the purchase price of the lands applied for by each of said applicants; and the said defendant Frederick A. Kribs promised and agreed to pay all the expenses of filing and making final proof, together with the purchase **[70]** price of the lands included in the respective applications and entries of the said O. Judd Mealey and John A. Thompson.

And your orator further shows unto your Honors and alleges: That each of said applicants hereinbefore mentioned and described and upon the dates hereinbefore set forth, filed a written statement in duplicate which is hereinbefore set forth, *filed a written statement in duplicate which is hereinbefore* designated as "Timber and Stone Sworn Statement," in which said written statements each of said applicants designated by legal subdivision the particular tract of land he or she desired to purchase, and set forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited, containing no mining or other improvements, nor, as such applicant verily believed, any valuable deposit of gold, silver, cinnabar, copper or coal, and that such applicant had made no other application under said Act, and that he or she did not apply to purchase the land above described on speculation, but in good faith to appropriate it *of* his or her own exclusive use and benefit, and that he or she had not directly or indirectly made any agreement in any way or manner with any person or persons whomsoever,

by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any person except himself or herself, which said statement of each of said applicants was verified by the oath of the respective applicants before the Register or Receiver of the said Land Office at Roseburg, Oregon, or before some other officer authorized by law to administer such oath.

Your orator further shows unto your Honors and alleges: That upon the filing of said statements, as hereinbefore [71] set forth, the register of the said United States Land Office, at Roseburg, Oregon, posted a notice of each of said applications, as required by law, furnished each of said applicants a copy of such notice for publication and the said defendants O. Judd Mealey, Will Mealey and John A. Thompson, pursuant to said unlawful conspiracy and agreement hereinbefore mentioned, caused each of said notices to be duly and regularly published in a newspaper, as required by law, and after the expiration of such publication the said defendants O. Judd Mealey, Will Mealey, and John A. Thompson, furnished to the Register of said Roseburg Land Office satisfactory evidence that said notice of the application of each of said applicants had been duly published in a newspaper, as required by law, and procured each of said applicants to furnish satisfactory evidence to said Register that the said land included in each of said applications was unfit for cultivation and valuable chiefly for its timber, and that said land was unoccupied and without improvements either mining or agricultural, and that it apparently con-

tained no valuable deposit of gold, silver, cinnabar, copper or coal; and upon the submission of said evidence and proof so furnished and offered, and notwithstanding the facts as hereinbefore set forth, the officers of the said United States Land Office at Roseburg, Oregon, being ignorant thereof and having no means of knowing or ascertaining the same, did receive from each of said applicants the sum of $400.00 as payment for the lands described in said respective applications, under the said Act of Congress of June 3d, 1878, at the rate of $2.50 per acre, and permitted each of said applicants to enter the lands described in his or her respective applications, and issued to each of said applicants a certificate to the effect that such applicant had purchased **[72]** the land described therein and had made payment in full therefor, as required by law, which said entries, payments and certificates were permitted, made and issued on the cates and in the manner following, to wit:

Final Certificate No. 8510, Richard F. Malone, October 9th, 1900;

Final Certificate No. 8516, William J. Lawrence, October 9th, 1900;

Final Certificate No. 8508, Alexander Gould, October 9th, 1900;

Final Certificate No. 8511, John J. Gilliland, October 9th, 1900;

Final Certificate No. 8512, Louis Maynard, October 9, 1900;

Final Certificate No. 8419, O. Judd Mealey, October 9, 1900;

Final Certificate No. 8446, Joseph O. Mikalson, Au-

gust 27th, 1900;

Final Certificate No. 8517, James W. Rozell, October 9, 1900;

Final Certificate No. 8445, John Thomas Parker, August 27th, 1900;

Final Certificate No. 8444, Samuel D. Pickens, August 27, 1900;

Final Certificate No. 8509, Sidney H. Scanland, October 9th, 1900;

Final Certificate No. 8447, Joseph H. Steingrandt, August 27th, 1900;

Final Certificate No. 8422, John A. Thompson, August 16th, 1900;

Final Certificate No. 8513, Cornelius N. Tuthill, October 9th, 1900;

Final Certificate No. 9522, R. C. Watkinds, October 9, 1900;

Final Certificate No. 8443, Charles Wiley, August 27, 1900;

Final Certificate No. 8442, William W. Billings, August 27th, 1900;

And your orator further shows unto your Honors that pursuant to said unlawful conspiracy to defraud the United States out of its said lands as aforesaid and pursuant to said unlawful agreements entered into by the said defendants O. Judd Mealey, Will Mealey, and John A. Thompson, with each of said applicants prior to making and filing applications for the purchase of the lands hereinbefore described, the said O. Judd Mealey, Will Mealey and John A. Thompson, at the time each of said applicants made proof before the of-

ficers of the United States Land Office at Roseburg, Oregon, as aforesaid, paid and advanced all the expenses and fees of each of said applicants and their respective witnesses, and paid, advanced and furnished the purchase money for the lands included in the application *fo* each of said applicants except [73] that the expense, fees and purchase price of the lands included in the applications of the said O. Judd Mealey and John A. Thompson were paid by the defendant Frederick A. Kribs and in truth and in fact the said Frederick A. Kribs, C. A. Smith and Charles J. Swanson, furnished and advanced all the moneys with which the fees, expenses and purchase moneys of the said applicants upon their said respective applications and entries, were paid; and thereupon each of said applicants executed and delivered to the defendant Frederick A. Kribs a warranty deed, purporting to transfer, convey and set over unto the said defendant, Frederick A. Kribs, the title to the lands included and described in their respective applications and entries; and in each of said deeds the applicants who were married were joined by their respective wives or husbands.

VIII.

And your orator further shows unto your Honors and alleges, that each of the applications and entries hereinbefore mentioned were made by the respective applicants and entrymen and entrywomen as agents of and for the use and benefit of the said defendants C. S. Smith, Frederick A. Kribs and Charles A. Swanson, and also that each and every of the statements and representations made by the respective applicants and entrymen and entrywomen aforesaid,

in each of their respective applications, and in each of their respective final proofs, hereinbefore mentioned and referred to, was and were false, fraudulent and untrue, by reason and becau*es* of the facts hereinbefore set forth and alleged; and by reason and because of the facts that each legal subdivision of the particular tract of land which he or she desired to purchase, and described in his or her application, and in his or her final proof, was not [74] unfit for cultivation, and was not valuable chiefly for timber, and such applicant did not verily believe that the same contained no valuable deposits of gold, silver, cinnabar, copper or coal, and in truth and in fact such applicant had made other applications under said Act, and he or she did apply to purchase the lands above described on speculation and not in good faith and not to appropriate them to his or her own exclusive use and benefit, and he or she had directly or indirectly made an agreement in some way and manner with some person or persons, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of some person except himself or herself, and in truth and in fact the oath of each of the respective applicants to their respective applications and their respective final proofs was wilfully and corruptly false and perjured, as the said applicant and the other defendants in this case then and there well knew, to wit, at the time of the making of said false representations an*s* statements in said applications and in said final proofs, and at the time of making their respective oaths.

IX.

And your orator further avers that the said false and fraudulent representations aforesaid were each and all of them made by the defendants herein with the intent to deceive and defraud the United States out of the use of, title to and possession of the lands hereinbefore described; and that your complainant and its officers empowered to act in the premises being ignorant of the falsity thereof, and having no means of ascertaining the [75] same, relied thereon and were induced thereby to and did, on the 9th day of July, 1902, and the 12th day of August, 1902, respectively, issue to each of said applicants to purchase and enter timber lands as hereinbefore set forth, a patent purporting to convey to the respective applicants the land described in said application and proof to the applicant who applied therefor as aforesaid.

X.

And your orator further avers that by reason of such false and fraudulent representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be cancelled and annulled and held for naught.

XI.

And your orator further shows unto your Honors, that all of said lands patented to the defendants as hereinbefore set forth, were applied for, entered and filed upon by each of said defendants for the use and benefit of the defendants Frederick A. Kribs, C. A. Smith, and Charles J. Swanson, and that before said lands were patented as aforesaid, to the respective

defendants, each of said defendants conveyed the lands respectively patented to him or her, to the defendant Frederick A. Kribs as hereinbefore alleged, and that the said defendant Frederick A. Kribs and his wife executed, acknowledged and delivered to the defendant C. A. Smith, on the 24th day of October, 1904, a deed which purported to convey to the said C. A. Smith a three-quarter undivided interest in and to the said lands patented as hereinbefore set forth and on the 28th day of December, 1904, the defendant Frederick A. Kribs and his wife executed, acknowledged and delivered to the defendant Charles J. Swanson, a deed **[76]** which purported to convey to the said Charles J. Swanson, a one-quarter undivided interest in and to all of the lands patented to the respective defendants as hereinbefore set forth.

And your orator further charges and avers that in each and every instance, and as to each and every party in this paragraph as above mentioned, he took and received said respective title deeds with full notice of the fraud so perpetrated upon your orator as alleged in this Bill of Complaint and without having paid or given any consideration therefor except that the said defendants Frederick A. Kribs, C. A. Smith and Charles J. Swanson, paid and advanced all the fees and expenses of the respective applicants to purchase and enter said lands and paid the purchase money received by the Government of the United States therefor, and paid to each of such applicants the sum of Fifty (50.00) Dollars and further paid the said defendants O. Judd Mealey, Will Mealey and J. A. Thompson certain sums of

money, the amounts of which are unknown to your orator for soliciting and procuring said persons to apply for and enter and file upon said lands; all of which said payments were made under agreements made with the respective persons prior to the time at which said applications and entries were made: and said deeds were executed, acknowledged and delivered, taken and received, respectively, by the said defendants as mentioned hereinbefore in this Bill of Complaint for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore described, to prevent the United States from recovering said lands and that each of such conveyances and deeds and pretended purchases is void in equity and should be so declared in favor of the United States. And each of [77] such purchases and deeds is void in equity, and should be so declared in favor of the United States and any purchases or pretended purchases, or encumbrances, or liens, or pretended encumbrances or apparent liens alleged to be existing in law or in equity thereon, upon such lands or any portion thereof, should be declared fraudulent by the decree of this Honorable Court.

XII.

That thereafter the said defendant, C. A. Smith, intending further to defraud and deceive this complainant and to corru;tly and fraudulently prevent complainant from recovering said lands hereinbefore described complied with the forms of the laws of the State of Minnesota relating to the organization of private corporations and on or about the 24th day of May, 1906, caused to be filed a certificate of the

articles of incorporation in the office of the Secretary of State in and for said State of Minnesota. That said articles, or certificate of incorporation was executed by the said C. A. Smith, his wife Johanna A. Smith, and his son Vernon Smith, as incorporators, and it was stated in the said articles of incorporation that the name by which the corporation sought to be organized should be known, should be Linn & Lane Timber Company.

That thereafter the said defendant, C. A. Smith, complied with the forms of the laws of the State of Minnesota necessary to authorize the said Linn & Lane Timber Company, to transact business as a corporation in the State of Minnesota. That the purpose of the formation of said corporation was to form a holding company for lands in the State of Oregon owned or claimed by the said defendant C. A. Smith. That your orator is informed and believes that all stock [78] of said corporation, if any was ever issued, to persons other than the said C. A. Smith, was and is held for the use and benefit of the said defendant, C. A. Smith. That said corporation is named in the title of this amended bill as a defendant herein.

That thereafter the defendant, C. A. Smith, for the purpose, among others, of fraudulently and corruptly preventing complainant from recovering the lands hereinbefore described on or about the 25th day of June, 1906, caused to be filed in the office of the Secretary of State of the State of Oregon, a certified copy of the articles and certificate of incorporation of said Linn & Lane Timber Company,

together with what purported to be the appointment of the defendant, F. A. Kribs as attorney in fact of said corporation in and for the State of Oregon; and ever since said time that the said defendants C. A. Smith and F. A. Kribs, have and do now pretend that the said defendant, F. A. Kribs, was and is such attorney in fact in and for the State of Oregon, of said Linn & Lane Timber Company.

XIII.

That thereafter, on or about the 9th day of September, 1908, the defendant, C. A. Smith, caused to be filed for record with the Recorder of Conveyances for Linn County, Oregon, two certain deeds purporting to have been executed by Charles J. Swanson, and Christina Swanson, his wife, and the said C. A. Smith and Johanna A. Smith, his wife, bearing dates, respectively, the 28th day of May, 1907, and the 4th day of June, 1906, each purporting to convey to the defendant, Linn & Lane Timber Company, the lands hereinbefore described. And your orator further avers and alleges that said deed of the said Charles J. Swanson, and his [79] said wife, Christina Swanson, was made and executed to the said Linn & Lane Timber Company without consideration and with full knowledge upon the part of said corporation of the fraudulent practice hereinbefore set forth and for the use and benefit of the said defendant, C. A. Smith, and for the corrupt and fraudulent purpose of preventing your complainant from recovering said land and that the said deed of the said defendant, C. A. Smith and Johanna A. Smith, his wife, was executed to the said defendant Linn & Lane Timber Company for the corrupt and

fraudulent purpose of preventing complainant from recovering said lands and without consideration paid therefor, and with full knowledge upon the part of said corporation of the fraudulent practice hereinbefore set forth and for the use and benefit of the said defendant C. A. Smith, and that said deed was not executed at the date which it bears upon its face, but was executed by the said defendant, C. A. Smith and Johanna A. Smith, his wife, long after the commencement of this suit and shortly prior to the time the same was offered for record as aforesaid, and that your orator had no knowledge or notice of said deeds of the said Charles J. Swanson, and his wife, Christina Swanson, and the said C. A. Smith and Johanna A. Smith, his wife, until after the same were offered for record as aforesaid, and the existence of the same was concealed from your orator up until the time they were offered for record as aforesaid, for the corrupt and fraudulent purpose of preventing complainant from recovering said lands, and your orator had no means of discovering the existence of said last mentioned deeds until they were so offered for recording.

XIV.

And your orator further avers that the false and fraudulent representations and corrupt and unconscionable [80] practices made and engaged in by the defendants as hereinbefore set forth, were all made with the intent and for the purpose of deceiving and defrauding the United States out of the use of, title to, and possession of, the lands hereinbefore described, and that your complainant relied upon said false and fraudulent representations so made

as aforesaid, and by reason of such false and fraudulent representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be canceled and annulled and held for naught, and any and every purchase or pretended purchase or encumbrance or lien or pretended encumbrance or apparent lien alleged by defendants or any of them to be existing at law or in equity upon the lands hereinbefore described or any portion thereof should be declared void by the decree of this Honorable Court.

XV.

Your orator further shows unto your Honors that immediately prior to the commencement of this suit your orator caused dil*d*gent search and inquiry to be made for the purpose of ascertaining the existence of any and all right, title and interest in any manner asserted or claimed in or to any of said lands, together with the names of any and all parties so asserting or claiming the same, and particularly those claiming to have the legal title thereto, by succession from the aforesaid original patentees, or otherwise, for the purpose of setting forth any and all such alleged right, title and interest in the original bill of complaint herein, and making all persons and corporations claiming or asserting the same, parties defendant to this suit. [81]

And in that behalf your orator caused inquiries to be made of all persons known to your orator who would be likely to possess any information upon the subject aforesaid, and caused diligent and accurate search to be made of th*a* public records of Linn

County, Oregon, wherein all of said lands are situated (and being the only public records known to your orator to contain any information upon said subject), including the registry records of said county pertaining to mortgages, deeds and other conveyances, and the records of the assessor's and sheriff's offices of said county concerning the assessment of said lands and the payment of taxes thereon.

That such search and inquiry did not reveal any right, title or interest in or to any of said lands, in favor of, or claimed or asserted by, said Linn and and Lane Timber Company, nor the existence of said Linn and Lane Timber Company; on the contrary, said search and inquiry disclosed that the defendants alleged in complainant's original bill of complaint to be claiming certain interests and estates in said lands were the only persons asserting or claiming any right, title or interest in or to any of said lands, and further disclosed that they, the said original defendants, had continuously asserted such claims subsequent to the time said alleged deeds of conveyance to said Linn and Lane Timber Company purport to have been executed, and down to and until the time of the filing of the original bill of complaint herein, that is to say, the registry records of said county disclosed that the legal title to all of said lands was in the aforesaid alleged grantors of said Linn [82] and Lane Timber Company, and the records of the assessor's and sheriff's offices of said county disclosed that all of said lands were assessed in the names of, and the taxes assessed thereupon were paid by, said alleged grantors of said Linn and Lane Timber Company; and said

inquiries made by and on behalf of your orator as aforesaid revealed the fact to be, and your orator alleges, that all of the lands described in this amended bill of complaint now are, and at all times have been, unoccupied, and none of said lands have ever been in the actual occupation or possession of any person or corporation, or at all.

And your orator says that if said Linn and Lane Timber Company ever acquired any alleged right, title or interest in or to any of said lands, it has at all times thereafter until September 9, 1908, permitted the public records of said Linn County to show that its alleged grantors held the legal title to all of said lands, and has at all times permitted all of said lands to be assessed in the names of its aforesaid grantors, and has further permitted said records to show that the taxes assessed upon all of said lands were paid by its aforesaid alleged grantors; and your orator further says that one of the said alleged grantors of said Linn and Lane Timber Company, to wit, C. A. *D*mith, in whose name a large part of said lands have been assessed and taxes thereon paid as aforesaid, was one of the incorporators of said Linn and Lane Timber Company as aforesaid, and at all times has been and still is the President thereof.

By reason of the premises your orator was kept in ignorance of any and all pretended rights and interests of said Linn and Lane Timber Company in or to any of said [83] lands, until apprised thereof by the filing of that certain plea interposed herein on the 5th day of September, 1908, by certain of the original defendants herein, whereby the afore-

said alleged rights and interests of said Linn and Lane Timber Company are set forth; and further by reason of the premises your orator was induced to believe, and at all times until apprised to the contrary as aforesaid did believe, that no right, title or interest of any kind or nature was asserted or claimed by any person or corporation other than as set forth in the original bill of complaint herein.

FORASMUCH, THEREFORE, as you orator is without adequate remedy in the premises, except in a court of equity where such matters are properly relievable, and to the end, therefore, that your orator may have that relief which may be obtained in a court of equity and in this court having jurisdiction thereof under the aforesaid facts as alleged, and that the defendants and each of them may answer the premises and show, if he or she can, why your complainant should not have the relief herein prayed for;

Your orator prays and requests of Your Honors to grant unto your complainant a writ of subpoena to be directed to said defendant, Linn and Lane Timber Company, and to such defendants as have not yet been served with process herein and each of them, commanding him or her at a day certain, and under a penalty therein to be limited to personally appear before this Honorable Court then and there well, true and direct and perfect answer make to all and singular the premises, but not under oath or affirmation, the benefit whereof is hereby expressly waived, and to stand, perform and abide by such order and decree as may be made against them in the premises [84] as to your Honors shall seem meet

and agreeable in equity and *at*at the defendants herein that have been heretofore served with process or have heretofore appeared herein shall make like answer at a day certain to be named by your Honors under like conditions, that your complainant may have such further and other relief in the premises as the nature of the circumstances may require and particularly that your orator may have a decree canceling and annulling and setting aside all liens and encumbrances and pretended liens and encumbrances upon said lands, and divesting the defendants, and each of them, of and from all right, title, estate in law or equity and of all claim or interest of whatsoever kind or nature that they or any of them may assert thereto, and in and about the premises may make such further orders or decree as may be meet and agreeable to equity, and that your complainant may have its costs in this suit, and recover such damages and penalties herein as to your Honors and circumstances may seem to warrant and as may seem meet and agreeable to equity.

CHARLES J. BONAPARTE,
Attorney General of the United States.
JOHN McCOURT,
United States Attorney for the District of Oregon.
TRACY C. BECKER,
Special Assistant to the Attorney General.

United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn, on oath depose and say that I am United States Attorney for the District of Oregon, and that the facts set forth

in the foregoing bill of complaint are true as I verily believe.

JOHN McCOURT. [85]

Subscribed and sworn to before me this 3d day of November, 1908.

[Seal] B. AMY,
Notary Public for Oregon.

Due, legal and timely service of the foregoing Amended Bill of Complaint, by copy duly certified to by John McCourt, United States Attorney for the District of Oregon, is hereby admitted at Portland, Oregon, this 4th day of November, 1908.

DOLPH, MALLORY, SIMON & GEARIN,
Per M.
Attys. for ————.
ALBERT H. TANNER,
Attys. for ————.
L. H. TARPLEY,
Attys. for ————.

Filed November 16, 1908. G. H. Marsh, Clerk. [86]

And afterwards, to wit, on Monday, the 16th day of November, 1908, the same being the 37th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [87]

[Order Directing Issuance of Subpoena Ad Respondendum to Linn & Lane Timber Co., etc.]

(Title of Court and Cause.)

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and the defendants C. A. Smith and Charles J. Swanson, by Mr. John M. Gearin, of counsel, and the defendant Frederick A. Kribs, by Mr. Albert H. Tanner, of counsel: Whereupon, it appearing to the Court that the plaintiff has filed an Amended Bill of Complaint herein, in which the Linn and Lane Timber Company is made a party defendant in addition to the defendants named in the original Bill of Complaint on motion of said plaintiff, IT IS ORDERED that a Subpoena ad Respondendum, returnable as provided by the Equity Rules on the Rule Day in December, 1908, issue to said defendant, Linn & Lane Timber Company. And it is further ordered that the remaining defendants in this cause answer, demur or plead to said Amended Bill of Complaint within thirty days from this date.

CHAS. E. WOLVERTON,
Judge.

Filed November 16, 1908. G. H. Marsh, Clerk.

[88]

And afterwards, to wit, on the 16th day of November, 1908, there was issued out of said court a Subpoena ad Respondendum, which with the marshal's return thereon, in words and figures, as follows, to wit: **[89]**

[Marshal's Return to Subpoena Ad Respondendum.]

United States of America,
District of Oregon,—ss.

I, Charles J. Reed, United States Marshal for the District of Oregon, hereby certify that I received the within writ of subpoena ad respond*ed*um on the 18th day of November, 1908, and that I served the same upon the 18th day of November, 1908, within the State and District of Oregon, and within Multnomah County thereof, upon the within named defendant, Linn and Lane Timber Company, a corporation, by personally delivering to Frederick A. Kribs in person, as attorney in fact and authorized agent of said Linn and Lane Timber Company, a true copy of said subpoena ad respondendum, duly and regularly certified to be such copy by G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, together with a true copy of the bill of complaint herein, duly and regularly certified to be such copy by John McCourt, United States Attorney for the District of Oregon, the said Frederick A. Kribs being then and there a citizen and resident of the State of Oregon, residing in Portland, Multnomah County, Oregon, and being the duly appointed, true and lawful attorney in fact and authorized agent of the Linn and Lane Timber Company, a corporation, defendant, authorized to make and accept service of all writs, processes and summonses in any action, suit or proceeding in any of the courts of the State of Oregon or United States Courts therein, and upon whom all lawful writs, processes and

summonses may be served to the same effect as though the said Linn and Lane Timber Company existed in the State of Oregon, requisite and necessary to give competent and complete jurisdiction of said Linn and Lane Timber Company to any of said Courts.

In witness whereof I have hereunto set my hand this 20th day of November, 1908.

CHARLES J. REED,
U. S. Marshal for District of Oregon.
Leonard Becker,
Deputy. **[90]**

(Title of Court and Cause.)

Subpoena Ad Respondendum [to Linn & Lane Timber Co.]

The President of the United States of America, to Linn and Lane Timber Company, Greeting:

You and each of you are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the city of Portland, in said District, on the first Monday of December next, which will be the 7th day of December, A. D. 1908, to answer the exigency of an Amended Bill of Complaint exhibited and filed against you in our said Court, wherein The United States of America is complainant and you are defendant, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to Command you, the Marshal of said District, or your Deputy, to make due service

of this our Writ of Subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 16th day of November, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States the one hundred and thirty-third.

G. H. MARSH,
Clerk.
By J. W. Marsh,
Deputy Clerk.

[Seal U. S. Circuit Court, District of Oregon.]

MEMORANDUM PURSUANT TO EQUITY RULE NO. 12 OF THE SUPREME COURT OF THE UNITED STATES:

The defendant is to enter his appearance in the above-entitled suit in the office of the Clerk of said Court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso.*

[Endorsed]: No. 3319. In the Circuit Court of the United States, for the District of Oregon. In Equity. United States vs. C. A. Smith et al. Subpoena ad Respondendum. Filed Novemeb: 20, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[91]**

And afterwards, to wit, on Wednesday, the 2d day of December, 1908, the same being the 50th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to wit: **[92]**

[Order Allowing Defendants Time to Plead to Amended Bill.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff in the above-entitled cause by Mr. John McCourt, United States Attorney, and the defendants C. A. Smith and Charles J. Swenson by Mr. John M. Gearin, of counsel: Whereupon, on motion of said defendants, IT IS ORDERED that all defendants be, and they are hereby, allowed until Monday, February 1, 1909, in which to plead to the amended bill of complaint herein. **[93]**

And afterwards, to wit, on the 29th day of December, 1908, there was duly filed in said court a praecipe for appearance of defendant, Linn and Lane Timber Company, in words and figures as follows, to wit: **[94]**

[Praecipe for Entry of Appearance for Linn & Lane Timber Co.]

(Title of Court and Cause.)

To the Clerk of the Above-entitled Court:

You will please enter our appearance as solicitors

and counsel for the defendant, the Linn & Lane Timber Company, in the above-entitled cause.

Dated January 4, 1909.

JOHN LIND.
A. UELAND.
W. M. JEROME.
JNO. M. GEARIN.
DOLPH, MALLORY, SIMON & GEARIN.

Notices and copies in the above-entitled cause may be served on each of the undersigned by delivering the same to John M. Gearin, Esq., at his office in the Mohawk Building, Portland, Oregon.

JOHN LIND,
A. UELAND,
W. M. JEROME,
Solicitors and Counsel for Defendant the Linn & Lane Timber Company.

Notice of Appearance. Filed December 29, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[95]**

And afterwards, to wit, on the 29th day of January, 1909, there was duly filed in said court an Answer of C. A. Smith et al. to the Amended Bill of Complaint, in words and figures as follows, to wit: **[96]**

[Joint and Several Answers of Charles A. Smith et al. to Amended Bill.]

(Title of Court and Cause.)

The joint and several answers of Charles A. Smith, Charles J. Swanson and Frederick A. Kribs, defend-

ants, to the amended bill of complaint of the United States of America, the complainant.

These defendants respectively now and at all times hereafter saving and reserving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

FIRST. These defendants respectively deny that Frederick A. Kribs, C. A. Smith, Charles J. Swanson, O. Judd Mealey, Will Mealey, John A. Thompson, or any of them, either together with other persons or otherwise, ever entered into a conspiracy or agreement to defraud the complainant out of the title to the lands described in the amended bill, or any of said lands. And these defendants respectively say it is not true that is was ever understood or agreed between the **[97]** persons named in this paragraph, or any of them, that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should solicit or procure any person to make application for or entry on any of said land under any Act of Congress or otherwise; or that said O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should procure or obtain from any person filing on any of said lands any agreement or promise that the title which such person might acquire from the complainant should inure to the benefit of Frederick A. Kribs, or C. A. Smith, or Charles J. Swanson;

or that any person after filing on any of said lands and receiving certificate that he had been permitted to file thereon, should or would execute or deliver to Frederick A. Kribs, or C. A. Smith, or Charles J. Swanson, any deed or other conveyance of any of said lands; or that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should promise any person to pay any expense of filing, or of making final proof on any of said lands, or the price required to be paid to the complainant for any of said lands, or any part of such expense or purchase price.

SECOND. These defendants respectively have no reason to doubt, and therefore believe, that applications to enter and purchase the several tracts of land described in the amended bill, under the Act of Congress in said bill referred to, were made by the several entrymen in said amended bill named, at the United States Land Office at Roseburg, Oregon, at or about the times in said amended bill stated, and that each application was verified by the oath of the person making such application, and filed on the date mentioned in the amended bill, and that each application was for the land in that behalf described in said amended bill, except that the land applied for by O. Judd Mealey was in Range 2 East, and the land applied for by Joseph Steingrandt was in Section 10, Township 14 South, Range 3 East.

THIRD. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey and John A.

Thompson, or any of them, solicited or procured any of said entrymen to make any of the aforesaid applications to purchase and enter **[98]** said lands, and therefore leave the complainant to make such proof thereof as it shall be able to produce.

FOURTH. These defendants respectively say it is not true that any of said applicants, prior to making or filing his application to purchase or enter said land, made a contract or agreement with O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, whereby such applicant promised or agreed to purchase or enter said lands, or any part of the same, for the use or benefit of Frederick A. Kribs, C. A. Smith, or Charles J. Swanson; or that O. Judd Mealey or John A. Thompson, prior to making or filing his said application agreed to transfer, convey or set over any of said land, to Frederick A. Kribs, C. A. Smith, or Charles J. Swanson, or entered into any agreement with Frederick A. Kribs, C. A. Smith or Charles J. Swanson to transfer, or convey, or set over any of said lands to said Frederick A. Kribs, C. A. Smith or Charles J. Swanson. And these defendants respectively say it not true that prior to the making or filing of said applications, Frederick A. Kribs promised to pay any expense of filing, or of making final proof, or the purchase price on or for any of the lands entered by O. Judd Mealey or John A. Thompson.

FIFTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey or

John A. Thompson promised or agreed to pay any of said applicants the sum of $50, or any other sum, or the expense of filing or of making final proof on any of said lands, or the purchase price, for any of said lands, or any part of such expense or purchase price, and these defendants therefore leave the complainant to make such proof thereof as it shall be able to produce.

SIXTH. These defendants respectively have no reason to doubt, and therefore believe that the Timber and Stone Sworn Statements mentioned in the amended bill, contained and set forth, respectively, the several matters which in that behalf are in said amended bill specified, but for greater certainty these defendants crave leave to refer to said statements when produced. **[99]**

SEVENTH. These defendants respectively have no reason to doubt, and therefore believe, that upon filing the aforesaid statements, the Register of said United States Land Office posted a notice of each application as required by law, and furnished each applicant a copy of such notice for publication in a newspaper as required by law, and that satisfactory evidence that said notices had been so published in a newspaper was furnished to said Register, and that the applicants, respectively, furnished satisfactory evidence to said Register that the land covered by his application or entry was unfit for cultivation and valuable chiefly for timber, and that it was unoccupied and without improvement, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnebar,

copper or coal; and that upon submission of such proof the officers of said Land Office received from each applicant $400 as payment for the land described in the application of such applicant at the rate of $2.50 per acre, and permitted each applicant to enter the land described in his application, and issued to each applicant a certificate of purchase, as stated in said amended bill, but for greater certainty as to said final proofs and certificates of purchase these defendants crave leave to refer to the same when produced.

EIGHTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey or John A. Thompson caused any of the notices referred to in the foregoing paragraph (except the notices furnished to O. Judd Mealey and John A. Thompson) to be published in a newspaper, or furnished to the Register of said Land Office evidence that any of said notices (except the notices furnished to said Mealey and Thompson), had been published in a newspaper, or procured any of the applicants to furnish any evidence to said Register, and these defendants therefore leave the complainant to make such proof thereof as it shall be able to produce.

NINTH. These defendants respectively say that defendant Frederick A. Kribs resided in the State of Oregon during the years 1900 to 1903, both inclusive, and that during this period he was engaged in buying and selling timber lands situated in the States of Oregon and **[100]** California, and that

during said period defendant Charles A. Smith resided in the City of Minneapolis, in the State of Minnesota; that on or about the first day of January, 1900, it was agreed between said Kribs and Smith that said Kribs might from time to time submit to said Smith lists of timber lands in said Oregon and California, acquired or bargained for by him, the said Kribs, together with information concerning the timber on such lands, and the price paid or bargained to be paid for the same by said Kribs, and that said Smith might thereupon purchase the lands so submitted at the price paid or bargained to be paid for the same by said Kribs, with a reasonable amount per acre added to such price, which amount to be added was thereafter fixed and agreed upon by said Kribs and Smith to be the sum of twenty-seven and one-half cents per acre; that said agreement was modified on the 21st day of December, 1901, so that the price to be paid by said Smith thereafter under said agreement was to be fifty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands, and said agreement was again modified on the 5th day of December, 1902, so that the price to be paid by said Smith under said agreement during the following twelve months was to be thirty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands; that said Smith being a large purchaser of timber lands in said States during said period, it was considered that if it should be generally known in any locality that said Smith was purchasing timber lands in such locality such knowledge would tend to unduly advance

prices, and with a view of acquiring timber lands at a reasonable price, it was further understood and agreed between said Kribs and Smith, that the latter might designate persons other than himself in whose name title might be taken to such lands as said Smith might purchase pursuant to said agreement.

TENTH. These defendants respectively say that between the 17th day of April and the 13th day of October, 1900, said Frederick A. Kribs purchased from the entrymen named in the amended bill, respectively, at the price of $4.75 per acre, the land for which said entrymen had theretofore respectively made and filed the timber and stone sworn statements described in the amended bill, and for said consideration then paid to said entrymen, they respectively conveyed **[101]** to said Kribs, the wives of the married entrymen joining, the lands covered by their respective entries, and said conveyances were in each instance by deed in which the entrymen covenanted that he was seized in fee simple and that he would warrant and defend the premises conveyed against all lawful claims whatsoever. These defendants respectively say that thereafter the said Frederick A. Kribs offered the lands so conveyed to him to said C. A. Smith in accordance with the aforesaid agreement between them, and said Smith accepted said lands, and paid for the same $4.75 per acre, and twenty-seven and one-half cents per acre additional, in accordance with the said agreement, which was then the fair and full value of said lands, and having so accepted said lands and paid for the same, said Smith, in accord-

ance with the said agreement, directed an undivided one-fourth interest in said lands to be conveyed to Charles J. Swanson, and the remaining three-fourths interest to himself, and in accordance with such direction said Kribs and his wife executed and delivered to said Smith a deed, conveying to him an undivided three-fourths interest in said lands, and also executed and delivered to said Swanson a deed conveying to him an undivided one-fourth interest in said lands, and in each said deeds said Kribs covenanted that he was seized in fee simple of said lands, and had good right to sell and convey the same, and that he would warrant and defend the same against all persons lawfully claiming or to claim the whole or any part thereof.

ELEVENTH. These defendants respectively say that they, respectively, had no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill prior to the commencement of this suit, and that each in accepting and paying for each deed, executed and delivered to him as stated in the foregoing paragraph, acted in good faith, believing that the grantor in such deed could then rightfully and lawfully sell and convey the lands covered by such deed.

TWELFTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that any statement or representation **[102]** in any of the applications or final proofs referred to in the amended bill was false, or fraudulent, or untrue, or made with intent to deceive or defraud the complainant out of the use of,

or title to, or possession of, any of said lands, and these defendants therefore leave complainant to make such proof thereof as it may be able to produce.

THIRTEENTH. These defendants respectively deny that any of the applications or entries referred to in the amended bill of complaint was made by any of said applicants and entrymen as agent of, or for the use or benefit of, any of these defendants.

FOURTEENTH. These defendants respectively believe that on the 9th day of July, 1902, complainant issued a patent to each of the following named applicants, to wit: O. Judd Mealey, Joseph O. Mikalson, John Thomas Parker, Samuel D. Pickens, Joseph H. Steingrandt, John A. Thompson, Charles Wiley and William W. Billings, and that on the 12th day of August, 1902, complainant issued a patent to each of the other said applicants, and that complainant thereby granted and conveyed to each applicant the land covered by his said application and entry.

FIFTEENTH. These defendants respectively say it is not true that any of the deeds hereinbefore referred to was without consideration, or that any of these defendants paid or advanced to any of said entrymen any fee or expense, or any of the purchase money paid to the complainant, or any other sum, except that said Kribs paid said entrymen the consideration for their deeds to him as hereinbefore stated. And these defendants respectively say it is not true that any deed hereinbefore referred to was given to prevent complainant from recovering any of the lands described in the amended bill.

SIXTEENTH. These defendants respectively say that on or about the 31st day of May, 1906, defendant, the Linn and Lane Timber Company, was duly organized as a corporation under the general laws of the State of Minnesota, and its certificate of incorporation was executed by Charles A. Smith, Johanna A. Smith, and John Lind, and was recorded in the office of the Secretary of State for the said State of Minnesota on May 24, 1906, but said certificate was not executed by **[103]** Vernon Smith. And these defendants respectively say that said company was not organized for any purpose except as stated in said certificate of incorporation in the following words, to wit: "To buy, hold and sell timber lands and tenements in the United States of America and to conduct forestry, mining and agricultural operations on the same; to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale."

SEVENTEENTH. These defendants respectively say it is not true that said Linn and Lane Timber Company was organized by C. A. Smith or any other person with intent to defraud or deceive complainant, or to prevent complainant from recov-

ering any of the lands described in the amended bill.

EIGHTEENTH. These defendants respectively say that on or about the 25th day of June, 1906, the said Linn and Lane Timber Company caused to be filed in the office of the Secretary of State for the State of Oregon a certified copy of its said certificate of incorporation, and a power of attorney constituting and appointing Frederick A. Kribs as its attorney in fact and agent in and for the State of Oregon, but these defendants respectively say it is not true that C. A. Smith or any other person caused such certified copy or such power of attorney to be filed in said office for the purpose of preventing complainant from recovering any of the lands described in said amended bill.

NINETEENTH. These defendants respectively admit that since said certificate and power of attorney were so filed in the office of the Secretary of State for said State of Oregon, C. A. Smith and F. A. Kribs have pretended and claimed that said Kribs has been and is attorney in **[104]** fact in and for said State of Oregon for said company.

TWENTIETH. These defendants respectively say that said Linn and Lane Timber Company was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of one hundred dollars each; that on the 4th day of June, 1906, defendant Charles A. Smith and Johanna A. Smith, his wife, executed and acknowledged three certain deeds in which said Company was named as grantee, all dated on said day; that one of said deeds was for the lands described in the amended

bill and certain other lands in Linn County, Oregon, and is one of the deeds referred to in paragraph XIII of the amended bill; that one of said three deeds was for certain lands in Lane County, Oregon, then owned by said Smith, and one was for certain lands in Douglass County, Oregon, then also owned by said Smith; that at a meeting of the board of directors of said Company, held at the City of Minneapolis, in the State of Minnesota, on the 9th day of June, 1906, said Charles A. Smith offered to convey to said Company the lands described in said three deeds and to accept as a consideration for such conveyance the said capital stock of said company, which offer was on said day, and at said meeting accepted by said company, and pursuant thereto said three deeds were on said date delivered by said Charles A. Smith to said company, and the said capital stock of said company was at the same time issued by said company in accordance with directions given by said Charles A. Smith, as follows: One share thereof to Johanna A. Smith, one share thereof to John Lind, and nine hundred and ninety-eight shares thereof to said Charles A. Smith; that in order to perfect the title to the lands which said Smith agreed to convey to said company for said stock, said Smith, on May 28, 1907, procured Charles J. Swanson and Christine Swanson, his wife, to execute and deliver to said company the deed from them referred to in said paragraph XIII of the amended bill; and these defendants respectively say that said company purchased the lands described in the said amended bill at the time and in the manner and for the consideration aforesaid, in good faith,

believing that Charles A. Smith and Charles J. Swanson were then well and lawfully seized of [105] said lands in fee simple and could rightfully and lawfully convey the same to said company, and said company had then no notice or knowledge whatsoever of any claim in or to any of said lands on the part of the complainant.

TWENTY-FIRST. These defendants respectively admit that the aforesaid two deeds from Charles A. Smith and Charles J. Swanson, the same being the deeds referred to in paragraph XIII of the amended bill, were filed for record in the office of the Recorder of Conveyances for Linn County, Oregon, on September 9th, 1908, but deny that they were so filed by Charles A. Smith.

TWENTY-SECOND. These defendants respectively say that it is not true that either of the deeds referred to in the next foregoing paragraph was without consideration, or that any of these defendants or said company had notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the amended bill, or that either of the two deeds last above referred to was for the use or benefit of Charles A. Smith, or that either of said two deeds was executed for the purpose of preventing complainant from recovering said lands, or any part of the same, or that said deed from Charles A. Smith was executed on any other date than the date on which it purports to have been executed.

TWENTY-THIRD. These defendants respectively say that they do not know and cannot state as of their or either of their belief or otherwise whether or not it is alleged or is the fact that the

complainant did not know of the existence of the deeds referred to in paragraph XIII of the amended bill, until the same were offered for record, or that complainant had no means of discovering the existence of said deeds until they were offered for record, or that complainant prior to the commencement of the suit caused any search or inquiry to be made to ascertain who had some right, title, or interest in or to any of the aforesaid lands, and therefore leave complainant to make such proof thereof as it may be able to produce.

TWENTY-FOURTH. These defendants respectively say that it is not true that all the capital stock of said Linn and Lane Timber Company **[106]** has been or is held for the use or benefit of defendant Charles A. Smith, or that said Smith has at all times been or is the president of said company, but, on the contrary, that the facts respecting said matters are as follows: On February 15th, 1908, said Smith sold and transferred fifteen shares of said stock to Charles J. Johnson, of the City of Minneapolis, who has since been and now is the owner of the same. On February 14th, 1908, said Smith transferred three hundred shares of said stock to the Swedish-American National Bank of Minneapolis to secure promissory notes and other obligations given by him to said Bank, amounting in the aggregate to upwards of $350,000. On February 15th, 1908, said Smith transferred ten shares of said stock to Charles J. Swanson of Fridley, Minnesota, to secure a promissory note for $5,000 made by said Smith, and said Swanson has since held and now holds said ten shares as such security. On October 31, 1908, said Smith trans-

ferred to said Swedish-American National Bank additional two hundred and ten shares of said stock, two hundred and eight of which direct to said Bank, and one each to B. F. Nelson and C. C. Wyman in trust for said Bank, to further secure his, the said Smith's, aforesaid promissory notes and other obligations to said Bank. On said October 31, 1908, said Charles J. Johnson transferred his aforesaid fifteen shares to said Swedish-American National Bank to secure promissory notes and other obligations given by him to said Bank, amounting to upwards of $50,000. Said Swedish-American National Bank held the five hundred and ten shares transferred to it as hereinbefore stated until on or about the first day of December, 1908, at which time it sold, transferred and assigned to the Northwestern National Bank of Minneapolis the aforesaid promissory notes and other obligations held by it against said Smith and Johnson, and the said shares of stock held as security for the same, and the said Northwestern National Bank has since held, and now holds, said five hundred and twenty-five shares of the stock of said company as security for said promissory notes and other obligations of said Smith and Johnson, and there is now unpaid on said promissory notes and other obligations more than $250,000.

TWENTY-FIFTH. These defendants respectively aver that if the **[107]** complainant ever had any cause of action or suit for or concerning any of the matters in said amended bill mentioned, which these defendants respectively do in no sort admit, the complainant had full cognizance of all matters and things constituting such cause of action prior to the first day of March, 1905, and complainant is

guilty of gross laches in not bringing suit upon such cause of action before the lands described in the amended bill were conveyed to defendant, the Linn and Lane Timber Company, and pray that because of such laches complainant be not awarded any relief in this suit, and that its said amended bill be dismissed.

TWENTY-SIXTH. These defendants respectively are informed and believe that William J. Lawrence left heirs who are now living and within the jurisdiction of this court, but the names and places of residence of such heirs are unknown to these defendants respectively; and these defendants respectively say that they are advised and believe that said heirs are necessary and indispensable parties to this suit, and pray that said amended bill be dismissed because said heirs have not been made parties to the same.

TWENTY-SEVENTH. Defendants Charles A. Smith and Charles J. Swanson, respectively, aver that this suit was not commenced against them, or either of them, until more than six years after the date of the issuance of the patents to O. Judd Mealey, Joseph O. Mikalson, John Thomas Parker, Samuel D. Pickens, Joseph H. Steingrandt, John A. Thompson, Charles Wiley and William W. Billings, described in the amended bill; and said Charles A. Smith and Charles J. Swanson, respectively, claim the benefit of an Act of Congress respecting the limitation of suits by the United States to vacate and set aside patents, approved March 3, 1891, and entitled "An Act to amend Section Eight of an Act approved March third, 1891, entitled An Act to repeal timber culture laws and for other purposes," in bar of the

complainant's said bill and all the relief sought by the complainant in this suit, as to the several patents referred to in this paragraph, and as to any and all of the lands for which said patents were issued; and said Charles A. Smith and Charles J. Swanson, respectively, pray that they, **[108]** respectively, may have the benefit of said Act as if they had severally and formally pleaded the same.

And these defendants respectively deny all and all manner of unlawful combinations and confederacy wherewith they are charged by said amended bill; without this, there is any other matter, cause or thing in said amended bill of complaint contained material to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants respectively are ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) C. A. SMITH.
C. J. SWANSON.
FRED. A. KRIBS.

(Signed) JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
Of Counsel for said Charles A. Smith and Charles J. Swanson.

ALBERT H. TANNER,
Of Counsel for said Frederick A. Kribs.

Filed January 29, 1909. G. H. Marsh, Clerk United States Circuit Court, District of Oregon. **[109]**

And afterwards, to wit, on the 29th day of January, 1909, there was duly filed in said court an Answer of the Linn and Lane Timber Company to the Amended Bill of Complaint, in words and figures as follows, to wit: **[110]**

[Answer of Linn & Lane Timber Co. to Amended Bill.]

(Title of Court and Cause.)

The answer of Linn and Lane Timber Company, one of the defendants, to the amended bill of complaint of the United States of America, the complainant.

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

FIRST. This defendant avers that if the complainant ever had any cause of suit or action against this defendant for or in respect of the several allegations and complaints in complainant's said amended bill contained, or any of them, the same accrued to the complainant upwards of six years before the filing of the bill of complaint in this suit against this de-

fendant, or the suing out process thereon against [111] this defendant; and that the bill of complaint in this suit against this defendant was not filed, nor was the process thereon against this defendant issued within six years after the date of the issuance of the several patents, which complainant in its said amended bill prays to have annulled and set aside; and this defendant claims the benefit of an Act of Congress respecting the limitation of suits by the United States to vacate and annul patents, approved March 3, 1891, and entitled "An Act to amend section eight of an Act approved March third, 1891, entitled An Act to repeal timber culture laws and for other purposes," in bar of the complainant's said bill and all the relief sought by the complainant in this suit; and this defendant prays that it may have the same benefit from said Act as if it had formally pleaded the same.

SECOND. This defendant, insisting on its aforesaid defense, denies that Frederick A. Kribs, C. A. Smith, Charles J. Swanson, O. Judd Mealey, Will Mealey, John A. Thompson, or any of them, either together with other persons or otherwise, ever entered into a conspiracy or agreement to defraud the complainant out of the title to the lands described in the amended bill, or any of said lands. And this defendant says it is not true that it was ever understood or agreed between the persons named in this paragraph, or any of them, that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should solicit or procure any person to make application for or entry on any of said land under any Act

of Congress or otherwise; or that said O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should procure or obtain from any person filing on any of said lands any agreement or promise that the title which such person might acquire from the complainant should inure to the benefit of Frederick A. Kribs, or C. A. Smith, or Charles J. Swanson; or that any person after filing on any of said lands and receiving certificate that he had been permitted to file thereon, should or would execute or deliver to Frederick A. Kribs, or C. A. Smith, or Charles J. Swanson, any deed or other conveyance of any of said lands; or that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should promise any person to pay any expense of filing, **[112]** or of making final proof on any of said lands, or the price required to be paid to the complainant for any of said lands, or any part of such expense or purchase price.

THIRD. This defendant has no reason to doubt, and therefore believes, that applications to enter and purchase the several tracts of land described in the amended bill, under the Act of Congress in said bill referred to, were made by the several entrymen in said amended bill named, at the United States Land Office at Roseburg, Oregon, at or about the times in said amended bill stated, and that each application was verified by the oath of the person making such application, and filed on the date mentioned in the amended bill, and that each application was for the land in that behalf described in said amended bill, except that the land applied for by O. Judd Mealey

was in Range 2 East, and the land applied for by Joseph Steingrandt was in Section 10, Township 14 South, Range 3 East.

FOURTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, solicited or procured any of said entrymen to make any of the aforesaid applications to purchase and enter said lands, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

FIFTH. This defendant says it is not true that any of said applicants, prior to making or filing his application to purchase or enter said land, made a contract or agreement with O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, whereby such applicant promised or agreed to purchase or enter said lands, or any part of the same, for the use or benefit of Frederick A. Kribs, C. A. Smith, or Charles J. Swanson; or that O. Judd Mealey or John A. Thompson, prior to making or filing his said application agreed to transfer, convey or set over any of said land, to Frederick A. Kribs, C. A. Smith, or Charles J. Swanson, or entered into any agreement with Frederick A. Kribs, C. A. Smith or Charles J. Swanson to transfer, or convey, or set over, any of said lands to said Frederick A. Kribs, C. A. Smith or Charles J. Swanson. And this defendant says it is not true that prior to the **[113]** making or filing of said applications, Frederick A. Kribs promised to pay any expense of filing, or of making final

proof, or the purchase price on or for any of the lands entered by O. Judd Mealey or John A. Thompson.

SIXTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey or John A. Thompson promised or agreed to pay any of said applicants the sum of $50, or any other sum, or the expense of filing or of making final proof on any of said lands, or the purchase price for any of said lands, or any part of such expense or purchase price, and defendant therefore leaves the complainant to make such proof thereof as it shall be able to produce.

SEVENTH. This defendant has no reason to doubt, and therefore believes that the Timber and Stone Sworn Statements mentioned in the amended bill, contained and set forth, respectively, the several matters which in that behalf are in said amended bill specified, but for greater certainty this defendant craves leave to refer to said statements when produced.

EIGHTH. This defendant has no reason to doubt, and therefore believes, that upon filing the sforesaid statements, the Register of said United States Land Office posted a notice of each application as required by law, and furnished each applicant a copy of such notice for publication in a newspaper as required by law, and that satisfactory evidence that said notices had been so published in a newspaper was furnished to said Register, and that the applicants, respectively, furnished satisfactory evi-

dence to said Register that the land covered by his application or entry was unfit for cultivation and valuable chiefly for timber, and that it was unoccupied and without improvement, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnebar, copper or coal; and that upon submission of such proof the officers of said Land Office received from each applicant $400 as payment for the land described in the application of such applicant at the rate of $2.50 per acre, and permitted each applicant to enter the land described in his **[114]** application, and issued to each applicant a certificate of purchase, as stated in said amended bill, but for greater certainty as to said final proofs and certificates of purchase this defendant craves leave to refer to the same when produced.

NINTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey or John A. Thompson caused any of the notices referred to in the foregoing paragraph (except the notices furnished to O. Judd Mealey and John A. Thompson) to be published in a newspaper, or furnished to the Register of said Land Office evidence that any of said notices (except the notices furnished to said Mealey and Thompson), had been published in a newspaper, or procured any of the applicants to furnish any evidence to said Register, and defendant therefore leaves the complainant to make such proof thereof as it shall be able to produce.

TENTH. This defendant is informed and believes that defendant Frederick A. Kribs resided in

the State of Oregon during the years 1900 to 1903, both inclusive, and that during this period, he was engaged in buying and selling timber lands situated in the States of Oregon and California, and that during said period defendant Charles A. Smith resided in the City of Minneapolis, in the State of Minnesota; that on or about the first day of January, 1900, it was agreed between said Kribs and Smith that said Kribs might from time to time submit to said Smith lists of timber lands in said Oregon and California, acquired or bargained for by him, the said Kribs, together with information concerning the timber on such lands, and the price paid or bargained to be paid for the same by said Kribs, and that said Smith might thereupon purchase the lands so submitted at the price paid or bargained to be paid for the same by said Kribs, with a reasonable amount per acre added to such price, which amount to be added was thereafter fixed and agreed upon by said Kribs and Smith to be the sum of twenty-seven and one-half cents per acre; that said agreement was modified on the 21st day of December, 1901, so that the price to be paid by said Smith thereafter under said agreement was to be fifty cents per acre in addition to **[115]** the price paid or bargained to be paid by said Kribs for such lands, and said agreement was again modified on the 5th day of December, 1902, so that the price to be paid by said Smith under said agreement during the following twelve months was to be thirty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands; that said Smith being a large purchaser of timber lands in said States

during said period, it was considered that if it should be generally known in any locality that said Smith was purchasing timber lands in such locality such knowledge would tend to unduly advance prices, and with a view of acquiring timber lands at a reasonable price, it was further understood and agreed between said Kribs and Smith, that the latter might designate persons other than himself in whose names title might be taken to such lands as said Smith might purchase pursuant to said agreement.

ELEVENTH. This defendant is informed and believes that between the 17th day of April and the 13th day of October, 1900, said Frederick A. Kribs purchased from the entrymen named in the amended bill, respectively, at the price of $4.75 per acre, the land for which said entrymen had theretofore respectively made and filed the timber and stone sworn statements described in the amended bill, and for said consideration then paid to said entrymen, they respectively conveyed to said Kribs, the wives of the married entrymen joining, the lands covered by their respective entries, and said conveyances were in each instance by deed in which the entrymen covenanted that he was seized in fee simple and that he would warrant and defend the premises conveyed against all lawful claims whatsoever. This defendant is informed and believes that thereafter the said Frederick A. Kribs offered the lands so conveyed to him to said C. A. Smith in accordance with the aforesaid agreement between them, and said Smith accepted said lands, and paid for the same $4.75 per acre, and twenty-seven and one-half cents per acre additional,

in accordance with the said agreement, which was then the fair and full value of said lands, and having so accepted said lands and paid for the same, said Smith, in accordance with the said agreement, directed an undivided one-fourth interest in said lands to be conveyed to Charles J. Swanson, and the remaining **[116]** three-fourths interest to himself, and in accordance with such direction said Kribs and his wife executed and delivered to said Smith a deed, conveying to him an undivided three-fourths interest in said lands, and also executed and delivered to said Swanson a deed conveying to him an undivided one-fourth interest in said lands, and in each said deeds said Kribs covenanted that he was seized in fee simple of said lands, and had good right to sell and convey the same and that he would warrant and defend the same against all persons lawfully claiming or to claim the whole or any part thereof.

TWELFTH. This defendant is informed and believes that Frederick A. Kribs, Charles A. Smith and Charles J. Swanson, respectively, had no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill prior to the commencement of this suit, and that each in accepting and paying for each deed, executed and delivered to him as stated in the foregoing paragraph, acted in good faith, believing that the grantor in such deed could then rightfully and lawfully sell and convey the lands covered by such deed.

THIRTEENTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that any

statement or representation in any of the applications or final proofs referred to in the amended bill was false, or fraudulent, or untrue, or made with intent to deceive or defraud the complainant out of the use of, or title to, or possession of, any of said lands, and this defendant therefore leaves complainant to make such proof thereof as it may be able to produce.

FOURTEENTH. This defendant denies that any of the applications or entries referred to in the amended bill of complaint was made by any of said applicants and entrymen as agent of, or for the use or benefit of C. A. Smith, Frederick A. Kribs or Charles J. Swanson.

FIFTEENTH. This defendant believes that on the 9th day of July, 1902, complainant issued a patent to each of the following named applicants, to wit: O. Judd Mealey, Joseph O. Mikalson, John Thomas Parker, Samuel D. Pickens, Joseph H. Steingrandt, John A. Thompson, Charles Wiley and William W. Billings, and that on the 12th **[117]** day of August, 1902, complainant issued a patent to each of the other said applicants, and that complainant thereby granted and conveyed to each applicant the land covered by his said application and entry.

SIXTEENTH. This defendant says it is not true that any of the deeds hereinbefore referred to was without consideration, or that Frederick A. Kribs, C. A. Smith, or Charles J. Swanson, paid or advanced to any of said entrymen any fee or expense, or any of the purchase money paid to the complainant, or any other sum, except that said Kribs paid said entrymen the consideration for their deeds to him as

hereinbefore stated. And this defendant says it is not true that any deed hereinbefore referred to was given to prevent complainant from recovering any of the lands described in the amended bill.

SEVENTEENTH. This defendant says that on or about the 31st day of May, 1906, it was duly organized as a corporation under the general laws of the State of Minnesota, and its certificate of incorporation was executed by Charles A. Smith, Johanna A. Smith, and John Lind, and was recorded in the office of the Secretary of State for said State of Minnesota on May 24, 1906, but said certificate was not executed by Vernon Smith. And this defendant says that it was not organized for any purpose except as stated in said certificate of incorporation in the following words, to wit: "To buy, hold and sell timber lands and tenements in the United States of America and to conduct forestry, mining and agricultural operations on the same; to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develope electric energy and other power for the operation of its works and the transportation of its products and for sale."

EIGHTEENTH. This defendant says it is not true that it was organized by C. A. Smith or any other

person with intent to defraud or deceive complainant, or to prevent complainant from recovering any [118] of the lands described in the amended bill.

NINETEENTH. This defendant says that on or about the 25th day of June, 1906, it caused to be filed in the office of the Secretary of State for the State of Oregon a certified copy of its said certificate of incorporation, and a power of attorney constituting and appointing Frederick A. Kribs as its attorney in fact and agent in and for the State of Oregon, but this defendant says it is not true that C. A. Smith or any other person caused such certified copy or such power of attorney to be filed in said office for the purpose of preventing complainant from recovering any of the lands described in said amended bill.

TWENTIETH. This defendant admits that since said certificate and power of attorney were so filed in the office of the Secretary of State for said State of Oregon, C. A. Smith and F. A. Kribs have pretended and claimed that said Kribs has been and is attorney in fact in and for said State of Oregon for this defendant.

TWENTY-FIRST. This defendant says that it was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of one hundred dollars each; that on the 4th day of June, 1906, defendant Charles A. Smith and Johanna A. Smith, his wife, executed and acknowledged three certain deeds in which this defendant was named as grantee, all dated on said day; that one of said deeds was for the lands described in the amended bill and certain other lands in Linn County, Oregon, and is

one of the deeds referred to in paragraph XIII of the amended bill; that one of said three deeds was for certain lands in Lane County, Oregon, then owned by said Smith, and one was for certain lands in Douglass County, Oregon, then also owned by said Smith; that at a meeting of the board of directors of this defendant, held at the City of Minneapolis in the State of Minnesota, on the 9th day of June, 1906, said Charles A. Smith offered to convey to this defendant the lands described in said three deeds and to accept as a consideration for such conveyance the said capital stock of this defendant, which offer was on said day, and at said meeting accepted by this defendant, and pursuant thereto said three deeds were on said date delivered by said **[119]** Charles A. Smith to this defendant and the said capital stock of this defendant was at the same time issued by this defendant in accordance with directions given by said Charles A. Smith, as follows: One share thereof to Johanna A. Smith, one share thereof to John Lind, and nine hundred and ninety-eight shares thereof to said Charles A. Smith; that in order to perfect the title to the lands which said Smith agreed to convey to this defendant for said stock, said Smith, on May 28, 1907, procured Charles J. Swanson and Christine Swanson, his wife, to execute and deliver to this defendant the deed from them referred to in said paragraph XIII of the amended bill; and this defendant says that it purchased the lands described in said amended bill at the time and in the manner and for the consideration aforesaid, in good faith, believing that Charles A. Smith and Charles J. Swanson were then

well and lawfully seized of said lands in fee simple and could rightfully and lawfully convey the same to this defendant, and this defendant had then no notice or knowledge whatsoever of any claim in or to any of said lands on the part of the complainant.

TWENTY-SECOND. This defendant admits that the aforesaid two deeds from Charles A. Smith and Charles J. Swanson, the same being the deeds referred to in paragraph XIII of the amended bill, were filed for record in the office of the Recorder of Conveyances for Linn County, Oregon, on September 9th, 1908, but denies that they were so filed by Charles A. Smith.

TWENTY-THIRD. This defendant says it is not true that either of the deeds referred to in the next foregoing paragraph was without consideration, or that this defendant had notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the amended bill, or that either of the two deeds last above referred to was for the use or benefit of Charles A. Smith, or that either of said two deeds was executed for the purpose of preventing complainant from recovering said lands, or any part of the same, or that said deed from Charles A. Smith was executed on any other date than the date on which is purports to have been executed.

TWENTY-FOURTH. This defendant says that it does not know and **[120]** cannot state as to its belief or otherwise whether or not it is alleged or is the fact that the complainant did not know of the existence of the deeds referred to in paragraph XIII of the amended bill, until the same were offered for

record, or that complainant had no means of discovering the existence of said deeds until they were offered for record, or that complainant prior to the commencement of the suit caused any search or inquiry to be made to ascertain who had some right, title, or interest in or to any of the aforesaid lands, and therefore leaves complainant to make such proof thereof as it may be able to produce.

TWENTY-FIFTH. This defendant says that it is not true that all the capital stock of this defendant has been or is held for the use or benefit of defendant Charles A. Smith, or that said Smith has at all times been or is the president of this defendant, but on the contrary that the facts respecting said matters are as follows: On February 15th, 1908, said Smith sold and transferred fifteen shares of said stock to Charles J. Johnson, of the city of Minneapolis, who has since been and now is the owner of the same. On February 14th, 1908, said Smith transferred three hundred shares of said stock to the Swedish-American National Bank of Minneapolis to secure promissory notes and other obligations given by him to said bank, amounting in the aggregate to upwards of $350,000. On February 15th, 1908, said Smith transferred ten shares of said stock to Charles J. Swanson of Fridley, Minnesota, to secure a promissory note for $5,000 made by said Smith, and said Swanson has since held and now holds said ten shares as such security. On October 31, 1908, said Smith transferred to said Swedish-American National Bank additional two hundred and ten shares of said stock, two hundred and eight of which direct to said Bank,

and one each to B. F. Nelson and C. C. Wyman in trust for said Bank, to further secure his, the said Smith's, aforesaid promissory notes and other obligations to said Bank. On said October 31, 1908, said Charles J. Johnson transferred his aforesaid fifteen shares to said Swedish-American National Bank to secure promissory notes and other obligations given by him to said Bank, amounting to upwards of $50,000. Said Swedish-American National Bank held the five hundred and ten shares **[121]** transferred to it as hereinbefore stated until on or about the first day of December, 1908, at which time it sold, assigned, and transferred to the Northwestern National Bank of Minneapolis the aforesaid promissory notes and other obligations held by it against said Smith and Johnson, and the said shares of stock held as security for the same, and the said Northwestern National Bank has since held, and now holds, said five hundred and twenty-five shares of the stock of this defendant as security for said promissory notes and other obligations of said Smith and Johnson, and there is now unpaid on said promissory notes and other obligations more that $250,000.

TWENTY-SIXTH. This defendant avers that the complainant ever had any cause of action or suit for or concerning any of the matters in said amended bill mentioned, which this defendant does in no sort admit, the complainant had full cognizance of all matters and things constituting such cause of action prior to the first day of March, 1905, and complainant is guilty of gross laches in not bringing suit upon such cause of action before the lands described in the

amended bill were conveyed to this defendant and prays that because of such laches complainant be not awarded any relief in this suit, and that its said amended bill be dismissed.

TWENTY-SEVENTH. This defendant is informed and believes that William J. Lawrence left heirs who are now living and within the jurisdiction of this court, but the names and places of residence of such heirs are unknown to this defendant; and this defendant says that it is advised and believes that said heirs are necessary and indispensable parties to this suit, and prays that said amended bill be dismissed because said heirs have not been made parties to the same.

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith it is charged by said amended bill; without this, there is any other matter, cause or thing in said amended bill of complaint contained material to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, [122] all which matters and things this defendant is ready and willing to aver maintain and prove as this Honorable Court shall direct; and humbly prays to be hence dismissed with its reasonable costs and

charges in this behalf most wrongfully sustained.

LINN & LANE TIMBER COMPANY.

[Seal] By B. F. NELSON,
President.

C. C. WYMAN,
Secretary.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
Of Counsel for said Defendant.

Filed January 29, 1909. G. H. Marsh, Clerk United States Circuit Court, District of Oregon.

[123]

And afterwards, to wit, on the 30th day of July, 1909, there was duly filed in said court, a Replication to the Answer of C. A. Smith et al. to the Amended Bill of Complaint, in words and figures as follows, to wit: **[124]**

[Replication to Joint and Several Answers of C. A. Smith et al. to Amended Bill.]

(Title of Court and Cause.)

The replication of J. R. Wyatt, Assistant United States District Attorney for the District of Oregon, to the joint and several answers of defendants, C. A. Smith, Charles J. Swanson and Frederick A. Kribs and other defendants, to the amended bill in equity exhibited against it and others by the United States District Attorney for Oregon in behalf of said United States in the Circuit Court of the said United States, this repliant for the said United States, saving and

reserving all advantage of exceptions to the said answer, for replication thereto says: That he for the said United States will aver and prove his said bill in equity to be true, certain and safe in law to be answered **[125]** unto, and that the said answer is uncertain, untrue and unsafe to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto confessed and avoided, traversed or denied, is true. All which matters and things this repliant for the said United States is and will be ready to aver and prove as this Honorable Court shall direct and for the said United States he prays as in and by his said bill of complaint in equity he has already prayed.

(Signed) J. R. WYATT,
Attorney for Complainant.

United States of America,
District of Oregon,—ss.

I hereby accept service of the foregoing reply upon me by certified copy at Portland, Oregon, on this 29 day of July, 1909.

C. A. DOLPH,
One of Counsel for Defendants.

Replication to Answer of C. A. Smith et al. Filed July 30, 1909. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[126]**

And afterwards, to wit, on the 30th day of July, 1909, there was duly filed in said court a Replication to the Answer of the Linn & Lane Timber Company to the Amended Bill of Complaint, in words and figures as follows, to wit: **[127]**

[Replication to Answer of Linn & Lane Timber Co. et al. to Amended Bill.]

(Title of Court and Cause.)

The replication of J. R. Wyatt, Assistant United States District Attorney for the District of Oregon, to the answer of the defendant, the Linn & Lane Timber Company, a corporation, to the amended bill in equity exhibited against it and others by the United States District Attorney for Oregon, in behalf of said United States in the Circuit Court of the said United States, this repliant for the said United States, saving and reserving all advantage of exceptions to the said answer, for replication thereto says: that he for the said United States will aver and prove his said bill in equity to be true, certain and safe in law **[128]** to be answered unto, and that the said answer is uncertain untrue and unsafe to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant for the said United States is and will be ready to aver and prove as this Honorable Court shall direct and for the said United States he prays as in and by his said bill of complaint in equity he has already prayed.

(Signed) J. R. WYATT,
Attorney for Complainant.

United States of America,
District of Oregon,—ss.

I hereby accept service of the foregoing Reply upon me by certified copy, at Portland, Oregon, this

29 day of July, 1909.

C. A. DOLPH,
One of Councel for Defendants.

Replication to Answer of Linn and Lane Timber Co. Filed July 30, 1909. G. H. Marsh, Clerk United States Circuit Court, District of Oregon. **[129]**

And afterwards, to wit, on Friday, the 18th day of February, 1910, the same being the 117th judicial day of the regular October, 1909, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding —the following proceedings were had in said cause, to wit: **[130]**

[Order Setting Cause for Final Hearing.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, IT IS ORDERED that this cause be, and the same is hereby, set for final hearing on Monday, April 18, 1910. **[131]**

And afterwards, to wit, on the 18th day of April, 1910, there was duly filed in said court objections to proposed amendment to *to* Bill of Complaint, in words and figures as follows, to wit: **[132]**

[Objections of Charles A. Smith et al. to Proposed Amendment to Amended Bill.]

(Title of Court and Cause.)

Defendants Charles A. Smith, Charles J. Swanson,

and the Linn and Lane Timber Company, jointly and severally, object to the proposed amendment to the amended bill of complaint on the following grounds:

1. It does not appear that the notice of the motion for leave to amend, which is prescribed by Equity Rule 29 in case of amendment of a bill after replication has been given to the other defendants in the suit who would be affected if the amendment was made.

2. It does not appear that the proposed amendment is not made for the purpose of veration or delay or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the Bill as required by Equity Rule 29.

3. The proposed amendment would not remedy the want of equity appearing on the face of the Bill.

4. The proposed amendment would enlarge complainant's case and change the character and quality of the relief.

5. The subject matter of the proposed amendment, if material, is in the nature of a cause of action at law, not within jurisdication of equity.

6. The proposed amendment would render the Bill maltifarious. **[133]**

7. The proposed amendment contains the following impertinent matter: "Said lands are now of the reasonable value of Two Hundred Forty-four Thousand ($244,000.00) Dollars."

8. The entire proposed amendment is impertinent matter, because the value of the land at the time of

the issuance of the final receiver's receipts less the amount then received by the complainant, would be the measure of damages not the value of the land at any subsequent date.

9. The proposed amendment would require new answers.

Dated April 18th,1910.

JOHN LIND,
A. UELAND,
W. M. JEROME,
J. M. GEARIN,
Counsel for said Defendants.

Objections to Proposed Amendment to Bill of Complaint. Filed April 18, 1910. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. **[134]**

And afterwards, to wit, on the 18th day of April, 1910, there was duly filed in said court an affidavit in support of motion to amend Bill of Complaint, in words and figures as follows, to wit: **[135]**

[Affidavit Filed April 18, 1910, of John McCourt.]

(Title of Court and Cause.)

United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn, say that I am United States Attorney for the District of Oregon and that the proposed amendment to the bill of complaint herein offered by me as United States Attorney, on or about the 18th day of February, 1910, is not and was not made for the purpose of vexation

or delay and the same is material and relevant in this cause, and could not have been by affiant or by complainant, by reasonable diligence, sooner introduced into the bill; that complainant has had due notice of said proposed amendment, and by the allowance thereof will not be prejudiced in any way; that said amendment is offered in furtherance of justice and to prevent a multiplicity of suit.

JOHN McCOURT,
United States Attorney.

Subscribed and sworn to before me this 18th day of April, 1910.

J. R. WYATT,
Notary Public for Oregon.

Affidavit. Filed April 18, 1910. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. **[136]**

And afterwards, to wit, on Monday, the 18th day of April, 1910, the same being the 7th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding,—the following proceedings were had in said cause, to wit: **[137]**

[Order of Submission of Motion for Leave to Amend Bill.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and defendants C. A. Smith, Charles J. Swanson and Linn & Lane

Timber Company, by Mr. John Lind, Mr. A. Ueland, and Mr. John N. Gearin, of counsel; defendant Frederick A. Kribs, by Mr. A. H. Tanner, of counsel, defendants O. Judd Mealey, Will Mealey, J. A. Thompson, Richard F. Malone, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Sydney H. Scanland, Richard D. Watkinds, and Charles Wiley, by Mr. Percy R. Kelly of counsel; and defendants Samuel D. Pickens, Joseph H. Steingrandt and Alexander Gould by Mr. Louis H. Tarpley of counsel. Whereupon, said plaintiff moves the Court for leave to amend its bill of complaint herein. And the Court having heard the arguments of Mr. John McCourt, United States Attorney, and of Mr. A. Ueland, and Mr. John Lind, of counsel for defendants, will advise thereof. **[138]**

And afterwards, to wit, on Tuesday, the 19th day of April, 1910, the same being the 8th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[139]**

[Order Allowing Pro Forma Motion to Amend Bill.]

(Title of Court and Cause.)

This cause was heard upon the motion of the plaintiff to amend its bill of complaint herein, and was argued by Mr. John McCourt, United States Attorney, and by Mr. A. Ueland and Mr. John Lind, of

counsel for defendants; upon consideration whereof, IT IS NOW HERE ORDERED AND ADJUDGED that said motion be, and the same is hereby, allowed *pro forma*, reserving said motion for further consideration at the termination of the evidence upon the final hearing of this cause as the Court shall determine. **[140]**

And afterwards, to wit, on the 22d day of April, 1910, there was duly filed in said court, an Amendment to the Bill of Complaint, in words and figures as follows, to wit: **[141]**

[Amendment of Bill (Filed April 22, 1910).]

(Title of Court and Cause.)

Comes now the United States of America by John McCourt, United States Attorney for the District of Oregon, and by leave of the Court first had and obtained, amends its *n*ill of complaint herein by adding a paragraph thereto designated as Paragraph No. 10½, and therein alleges as follows:

10½.

That at the time of the issuance of said patents to and for said lands as aforesaid, the same were of the reasonable value of One Hundred Thirty-six Thousand ($136,000.00) Dollars, and said lands are now of the reasonable value of Two Hundred Forty-four Thousand ($244,000.00) Dollars, and by reason of the fraudulent practices and representations of the defendants, by which complainant was wrongfully induced to issue patents for said lands as hereinbefore alleged, complainant was and is damaged in a

sum of money equal to the full value of said lands, and complainant will be entitled to recover said sum herein in the event it shall for any reason be impossible or inequitable for the Court to decree a cancellation of said patents as hereinafter prayed.

Dated at Portland, Oregon, this 21st day of April, 1910.

(Signed) JOHN McCOURT,
United States Attorney.

Filed April 22, 1910. G. H. Marsh, Clerk. **[142]**

And afterwards, to wit, on the 22d day of April, 1910, there was duly filed in said court an Answer to Amendment to Bill of Complaint, in words and figures as follows, to wit: **[143]**

[Joint and Several Answers of Linn & Lane Timber Co. et al. to Amendment of Bill.]

(Title of Court and Cause.)

The joint and several answers of Linn and Lane Timber Company, Charles A. Smith, Charles J. Swanson, and Frederick A. Kribs, defendants, to the matter contained in the amendment to the bill of complaint filed April 21, 1910:

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said amendment contained, and hereby expressly saving and reserving an exception to the order permitting said amendment to be made, severally answering the averments in said

amendment contained say as follows:

1. These defendants, respectively, deny that the value of the land described in the amended bill of complaint, at the time of the issuance of the patents therein described, or at any time prior thereto, was the sum of one hundred thirty-six thousand dollars, or any other or greater sum than thirteen **[144]** thousand six hundred sixty-eight dollars; and these defendants, respectively, deny that said lands are now of the reasonable value of two hundred forty-four thousand dollars, or of any other or greater value than twenty-seven thousand two hundred dollars, and these defendants respectively deny that the complaint is, or has ever been, damaged in any sum or amount whatsoever by reason of the issuance of said patents, or any of them, or by reason of any matter or things whatsoever in said bill contained; and these defendants respectively deny that the complainant is, or will be, entitled to recover any sum or amount whatsoever against either or any of these defendants.

2. These defendants, respectively, by leave of Court first obtained, further answering the bill of complaint, say that soon after said entries were made, information was lodged in complainant's Department of the Interior, charging that all said entries were fraudulent and void; that an order was thereupon made by said Department directing patents not to issue on said entries; that said Department thereupon instituted and for a period of more than two years carried on an examination of all matters pertaining to the alleged frauds in said entries; that

much evidence was adduced in said examination, and in and by said examination and evidence the matters and things in the amended bill complained of were brought before the Secretary of said Department for his decision; that being fully informed in the premises said Secretary thereupon in and by Department Letter L. R. R. Div. 932–1902, dated May 17th, 1902, and directed to the Commissioner of the General Land Office decided and determined that all said entries were lawfully made and valid and that patents should be issued on the same; that said patents were [145] thereupon issued, and the same are the patents described in the bill of complaint. And these defendants respectively say that all said matters having been so examined, heard and decided by complainant's said Secretary of the Interior, complainant is and ought to be barred from maintaining its said bill of complaint in this court and that said bill should be dismissed.

LINN & LANE TIMBER COMPANY,
CHARLES A. SMITH,
CHARLES J. SWENSON,
By A. UELAND,
Their Attorney.
JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
Of Counsel for said Defendants.
FREDERICK A. KRIBS,
By ALBERT H. TANNER,
Attorney and Counsel for said Frederick A. Kribs.

Filed April 22, 1910. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[146]**

And afterwards, to wit, on Tuesday, the 3d day of May, 1910, the same being the 20th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[147]**

[Order Appointing Special Examiner, etc.]

(Title of Court and Cause.)

Now, on this day comes the complainant by Mr. John McCourt, the United States Attorney for the District of Oregon, and defendants, The Linn and Lane Timber Company, Charles A. Smith and Charles J. Swanson, by Mr. John Lind, Mr. A. Ueland and Mr. John M. Gerin, their counsel, and defendant, Frederick A. Kribs, by Mr. A. H. Tanner, his counsel, and thereupon said defendants moved the Court for an order appointing some qualified person at the City of Minneapolis, in the State of Minnesota, to act as Examiner of this Court to take orally such testimony and evidence as the parties hereto decide to be taken at said City of Minneapolis.

It is therefore ORDERED that Mr. George F. Hitchcock, Jr., of Minneapolis, Minnesota, be, and he is hereby, appointed as Special Examiner of this Court with power and authority to take **[148]** and transmit to this Court such depositions and testimony in this cause as the parties hereto decide to be taken at said city of Minneapolis, and at such time between

the first and tenth days of June, 1910, as may suit the convenience of said Examiner and of the parties hereto; and that said Examiner extend said testimony when so taken and report the same to this Court with all convenient speed, said testimony when so taken to be used upon the trial of this cause.

Dated May 3, 1910.

R. S. BEAN,
Judge.

Filed May 3, 1911. G. H. Marsh, Clerk. **[149]**

And afterwards, to wit, on Thursday, the 5th day of May, 1910, the same being the 22d judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[150]**

[Order Re Taking of Evidence, etc.]

(Title of Court and Cause.)

The complainant, by Mr. John McCourt, the United States Attorney for the District of Oregon, and defendants, the Linn and Lane Timber Company, Charles A. Smith, and Charles J. Swanson, by Mr. John Lind, Mr. A. Ueland, and Mr. John M. Gerin, their counsel, appearing in open court and consenting thereto, it is ordered:

1. That the time of the complainant for the taking of its evidence in chief in this cause, be, and the same hereby is, closed, the same having been taken orally before the court except that the complainant, if it be so advised, may take as its evidence in chief

the testimony of Charles L. Trabert between the first and tenth days of June, 1910, at Minneapolis, Minnesota, before George F. Hitchcock, Jr., Special Examiner, appointed such by order of this court, entered in this cause May 3, 1910.

2. That the time of the defendants for taking their evidence in this cause be, and the same is, hereby limited to and including the tenth day of June, 1910, unless such time be extended by stipulation in writing between counsel in the case.

3. That complainant have until June 25, 1910, to take such evidence in rebuttal in this cause as it may be advised. **[151]**

4. That the Clerk of this Court be, and is hereby, directed to transmit to George F. Hitchcock, Jr., at his office in the Federal Building in the City of Minneapolis, State of Minnesota, before May 20, 1910, the documents introduced as evidence in this cause marked United States Exhibits Numbers respectively 155 to 161, both inclusive, for the purpose of having the same used in the taking of the evidence for the defendants in this cause before said George F. Hitchcock, Jr., as Special Examiner heretofore appointed for that purpose.

Dated May 5th, 1910.

R. S. BEAN,
Judge.

Filed May 5, 1911. G. H. Marsh, Clerk. **[152]**

And afterwards to wit, on Wednesday, the 27th day of July, 1910, the same being the 91st judicial day of the regular April, 1910, term of said

court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[153]**

[Order Allowing Filing of Amendment to Amended Bill, etc.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and defendants C. A. Smith, Charles J. Swenson and Linn & Lane Timber Company, by Mr. John Lind and Mr. John M. Gearin, of counsel, and defendant Frederick A. Kribs by Mr. Albert H. Tanner of counsel. Whereupon, the final hearing of this cause is resumed. And the Court having heard the arguments of counsel, will advise thereof. Whereupon, IT IS ORDERED that said plaintiff be, and it is hereby, allowed ten days from this date within which to file a brief herein, and IT IS ORDERED that the plaintiff be, and is hereby, allowed to file an amendment to its amended bill of complaint. **[154]**

And afterwards, to wit, on the 6th day of August, 1910, there was duly filed in said court an Amendment to Bill of Complaint, in words and figures as follows, to wit: **[155]**

[Amendment (Filed August 6, 1910) to Bill of Complaint.]

(Title of Court and Cause.)

Now comes John McCourt, United States Attorney for the District of Oregon, and by leave of Court

first had and obtained in the above-entitled cause, hereby amends the bill of complaint herein by adding thereto paragraph 9½, as follows:

9½.

And your orator further shows unto your Honors and alleges, that by reason of the facts hereinbefore stated, a fraud has been perpetrated on the complainant and it has been deprived of the legal title to the land hereinbefore described, contrary to law and good conscience, and that the officers of the United States Land Office at Roseburg, Oregon, and of the Department of the Interior and the General Land Office of the United States, and the President of the United States, had no knowledge of the facts as hereinbefore set out, and did not discover such facts until a long time after the issuance of such patents, and by the exercise of reasonable diligence could not have **[156]** discovered these facts any sooner; that after certificates upon final proof were issued by the United States Land Office at Roseburg, Oregon, as hereinbefore set forth, and during the years 1900, 1901 and 1902, and prior to the issuance of patents as hereinbefore set forth for the lands hereinbefore described, the defendants Frederick A. Kribs, C. A. Smith, O. Judd Mealey, Will Mealey, George F. Mealey, J. A. Thompson, and other persons acting for them and in their behalf, secured the respective entrymen and entrywomen hereinbefore named each to execute and subscribe affidavits and depositions in which it was falsely set forth and represented, in effect, to complainant, that each of said entrymen and entrywomen respectively had entered the land in good faith, to appropriate it to his or her own ex-

clusive use and benefit, and that he or she had not, prior to making said entry, directly or indirectly made any agreement in any way or manner, with any person or persons whomsoever, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any person except himself or herself, and that he or she did not apply to purchase the land included in the respective entries on speculation; and thereby, and by means of said false and fraudulent final proofs as hereinbefore set forth made by said entrymen and entrywomen respectively, and by means of affidavits of like tenor and effect subscribed by the defendants Frederick A. Kribs, O. Judd Mealey, Will Mealey, Goerge F. Mealey, J. A. Thompson, and other persons secured by them to make like affidavits, all of which were filed in the General Land Office of the United States prior to the issuance of said patents, issuance of said patents was procured and said **[157]** false and fraudulent representations were concealed from the complainant and complainant did not ascertain that a gross fraud had been perpetrated upon it, or that said representations of said entrymen and entrywomen, and of and in behalf of said defendants who were not entrymen, were false and fraudulent and untrue, until January, 1905, at which time complainant was conducting a vigorous investigation of charges of violations of the Public Land Laws, in Portland, Oregon, when a large number of said entrymen and entrywomen, together with the defendants Frederick A. Kribs, O. Judd Mealey, Will Mealey, George F. Mealey and J. A. Thompson, and also other persons who had acted with them in

the transactions hereinbefore set forth, disclosed to complainant that the Timber and Stone Land entries hereinbefore set forth and described were false and fraudulent as hereinbefore set forth; that prior to said January, 1905, complainant had no means or opportunity of ascertaining the false and fraudulent representations that had been made to it relative to said Timber and Stone land entries hereinbefore set forth, and of the fraud that had been perpetrated upon it relative thereto, by reason of the concealment of said fraud by the defendants as aforesaid.

The foregoing amendment is submitted in the above form by consent of opposing counsel, who do not require that a new formal amended bill of complaint be filed.

JOHN McCOURT.
United States Attorney for Oregon.

Amendment to Bill of Complaint. Filed August 6, 1910. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[158]**

And afterwards, to wit, on Thursday, the 20th day of October, 1910, the same being the 16th judicial day of the regular October, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[159]**

(Title of Court and Cause.)

Decree.

Now, on this 20th day of October, this cause coming on for final decree therein and it appearing to the

Court that said cause was heretofore heard and tried before the Court on the pleadings of the respective parties therein and that upon said hearing and trial the complainant and the defendants introduced testimony and evidence in support of their respective contentions, and thereafter, said cause was argued and submitted to the Court and the same was taken under advisement, and the Court being now fully advised,

[160]

IT IS ORDERED, ADJUDGED AND DECREED that those certain patents issued by complainant and bearing date the 12th day of August, 1902, and purporting to convey the lands hereinafter described to the persons hereinafter mentioned, are hereby declared to be void, and the same are hereby cancelled, annulled and set aside, that is to say, the patents issued to the following persons purporting to convey to them the lands described respectively as follows, to wit:

ALEXANDER GOULD—East half of Northwest Quarter (E. ½ NW. ¼); Southwest Quarter of Northwest Quarter (SW. ¼ NW. ¼); Southwest Quarter of Northeast Quarter (SW. ¼ NE. ¼), Section twenty-four (24), Township Fourteen (14) South, Range Four (4) East of Willamette Meridian.

SYDNEY H. SCANLAND—West half of Northeast Quarter (W. ½ NE. ¼); Northeast Quarter of Northeast Quarter (NE. ¼ NE. ¼), of Section Twenty-eight (28); Northwest Quarter of Northwest Quarter (NW. ¼ NW. ¼) of Section Twenty-seven (27), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

RICHARD F. MALONE—Northwest Quarter (NW. ¼) of Section Twenty-two (22), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

JOHN J. GILLILAND — Northwest Quarter (NW. ¼) of Section Twenty-eight (28), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

LOUIS MAYNARD—West half of Southwest Quarter (W. ½ SW. ¼); Northeast Quarter of Southwest Quarter (NE. ¼ SW. ¼); Northwest Quarter of Southeast Quarter (NW. ¼ SE. ¼), of Section Twenty-two (22), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

WILLIAM J. LAWRENCE—East half of Southwest Quarter (E. ½ SW. ¼); South half of Southeast Quarter (S. ½ SE. ¼), of Section Twenty (20), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

RICHARD C. WATKINDS — West half of Northeast Quarter (W. ½ NE. ¼); Southeast Quarter of Northeast Quarter (SE. ¼ NE. ¼); Northeast Quarter of Southeast Quarter (NE. ¼ SE. ¼), Section Twenty-two (22), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian. **[161]**

JAMES W. ROZELL—North Half of Southeast Quarter (N. ½ SE. ¼); North Half of Southwest Quarter (N. ½ SW. ¼), Section Twenty-eight (28), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

CORNELIUS N. TUTHILL—South Half of

Southeast Quarter (S. ½ SE. ¼), and Lots Three (3) and Four (4), Section Eighteen (18), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all deeds and conveyances of said lands above described or any of them, made and executed by the defendants or any of them, and particularly mentioned and described in the bill of complaint herein, be and they are each and all hereby declared to be in fraud and violation of and subject to the rights of complainant and are hereby cancelled, annulled and set aside, and said defendants and each and all of them and their agents, servants and employees, are hereby enjoined and restrained from asserting, exercising or exerting any authority or control over said lands or any of them or over or in relation to the title to said lands or any part thereof by virtue of said deeds and conveyances or any of them or otherwise; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the lands hereinbefore described, be and the same are hereby declared to be the property of complainant in fee simple, divested of all right, title or estate in law or equity claimed or asserted by defendants or either or any of them, and particularly the defendants C. A. Smith and the Linn and Lane Timber Company, and the said complainant is entitled to the immediate possession of all of said lands; and **[162]**

IT IS FURTHER ORDERED that the application of complainant made prior to the hearing and

trial of this cause to amend the bill of complaint herein by adding thereto Paragraph 10½ as follows:

> "That at the time of the issuance of said patents to and for said lands as aforesaid, the same were of the reasonable value of One Hundred Thirty-six Thousand ($136,000.00) Dollars and said lands are now of the reasonable value of Two Hunded Forty-four Thousand ($244,-000.00) Dollars, and by reason of the fraudulent practices and representations of the defendants, by which complainant was wrongfully induced to issue patents for said lands as hereinbefore alleged, complainant was and is damaged in a sum of money equal to the full value of said lands and complainant will be entitled to recover said sum herein in the event it shall for any reason be impossible or inequitable for the Court to decree a cancellation of said patents as hereinafter prayed,"

be and the same is hereby denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the relief prayed for by complainant as to the lands described in the complaint and to which patents were issued by complainant bearing date July 9th, 1902, be and the same is hereby denied and said bill of complaint is hereby dismissed as to said lands, that is to say, as to the lands described in the patents to the following named persons, defendants herein, and purporting to convey to them the lands described respectively as follows, to wit:

O. JUDD MEALEY—Southwest Quarter of Sec-

tion Twenty-six (26), Township Fourteen (14) South, Range Two (2) East of the Willamette Meridian.

JOHN A. THOMPSON—Northeast Quarter (NE. ¼) of Section Twenty-six (26), Township Fourteen (14) South, Range Two (2) East of the Willamette Meridian.

WILLIAM W. BILLINGS—Northwest Quarter Northwest Quarter (NW. ¼ NW. ¼) of Section Seventeen (17); North Half of Northeast Quarter (N. ½ NE. ¼); Southwest Quarter Northeast Quarter (SW. ¼ NE. ¼) of Section Eighteen (18), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian. **[163]**

CHARLES WILEY—West Half of West Half (W. ½ W. ½) of Section Twelve (12), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

SAMUEL D. PICKENS—West Half of Southwest Quarter (W. ½ SW. ¼); Southeast Quarter of Southwest Quarter (SE. ¼ SW. ¼); Southwest Quarter of Southeast Quarter (SW. ¼ SE. ¼), of Section Eleven (11), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOHN T. PARKER—North Half of Northeast Quarter (N. ½ NE. ¼); Southeast Quarter Northeast Quarter (SE. ¼ NE. ¼); Northeast Quarter of Southeast Quarter (NE. ¼ SE. ¼) of Section Eleven (11), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOSEPH O. MICKALSON—West Half of East Half (W. ½ E. ½) of Section Ten (10), Township

Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOSEPH H. STEINGRANDT—East Half of East Half (E. ½ E. ½) of Section Ten (10), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that complainant recover of and from the defendants, its costs and disbursements herein taxed and allowed at $1032.11.

Done and dated in open court at Portland, Oregon, this 20th day of October, 1910.

R. S. BEAN,
Judge.

Filed October 20, 1910. G. H. Marsh, Clerk. **[164]**

And, to wit, on the 9th day of August, 1910, there was duly filed in said court the Testimony and exhibits taken in open court, in words and figures as follows, to wit: **[165]**

[Testimony and Exhibits Taken and Introduced Before the Court.]

Portland, Oregon, Tuesday, April 26, 1910, 10 A. M.

(Title of Court and Cause.)

[Certain Offers in Evidence, etc.]

Mr. McCOURT.—If the Court please, in this case there are 17 entries involved. I think we can do away with the necessity of putting in all of the original papers. I may be able to use a sort of tabulated

statement I have here, similar to one put in in the other cases. This will do away with the original timber and stone filing papers. However, I desire to put in the fraudulent reports, similar to the ones offered in the other case.

Mr. UELAND.—May it please the Court, the defendants, Linn & Lane Timber Company, C. A. Smith and C. J. Swanson each object to the introduction of any testimony or evidence on the part of the complainants on the ground that it appears on the face of the bill that suit is barred by the Act of March 3, 1891.

Objection overruled; exception saved.

Mr. McCOURT.—We would like to have it appear in the record the dates on which the different parties filed in groups, so as to group the matter. Then there are three or four other entries that we want to show, in order to check up the amount of money paid by Kribs; for instance, the entries of Oliver Erickson, Jasper Keeney, Zillah Keeney, Antonio Steingrandt and William R. Mealey. We want to offer these entries for the purpose of checking [166] up the amounts of the money that was paid, and in connection with the testimony we will show that they were similar entries, so as to show the payments of Mr. Kribs, one of the defendants. That land is not included in the suit, but was taken at the same time, as we claim, under similar circumstances, and Mr. Kribs paid the Land Office fees the same date, and these entries go to make up the entire check.

Mr. UELAND.—Can't you show that orally? We will not object to that being oral when the time comes, if it will simplify the record.

Mr. McCOURT.—I think it will be simpler to put it in at once with the promise that we will supplement it by proof.

COURT.—Suppose you take the final papers and read the data from that.

Mr. McCOURT.—That is, perhaps, more satisfactory.

COURT.—Without putting the papers in evidence and it can then be checked up with the bill to see whether they compare or not.

Mr. McCOURT.—We will read *the* right into the record from the original. **[167]**

Mr. McCOURT.—There is some data that I wish to read in as I go along; for instance, the names of the proof witnesses.

O. J. Mealey, Foster, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1023.

Covering the SW. ¼ Section 26, T. 14 S. R. 2 E.

Date, May 15, 1900.

Mr. UELAND.—I would suggest that you have in the bill Range 4. If you care to amend that in the bill, we have no objections.

Mr. McCOURT.—It may be understood that the bill is amended to conform to the facts.

COURT.—Very well.

O. J. Mealey's entry continued:

Proof, August 16, 1900.

Proof witnesses, John A. Thompson, William R. Mealey.

Final Certificate No. 8419, issued bearing date August 16, 1900.

Mr. UELAND.—You have that in the bill as October 9th.

Mr. McCOURT.—Well, that does not conform to the fact.

John A. Thompson, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement, No. 1022.
Covering the NE. ¼ Sec. 26, T. 14 S. R. 2 E.
Date, May 15, 1900.
Proof, August 16, 1900.
Proof witnesses, O. Judd Mealey, William Mealey.
Final Certificate No. 8422, issued August 16, 1900.

William W. Billings, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1105.
Covering the NW. ¼ of NW. ¼, Sec. 17; N. ½ of NE. ¼ and SW. ¼ of NE. ¼, Sec. 18, T. 14 S. R. 3 E.
Date, June 14, 1900.
Proof, August 27, 1900.
Proof witnesses, J. A. Thompson and O. J. Mealey.
Final Certificate No. 8442, issued August 27, 1900.

Joseph O. Mickalson, Sweet Home, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1106.
Covering the W. ½ of the E. ½ Sec. 10, T. 14 S. R. 3 E.
Date, June 14, 1900.
Proof, August 27, 1900.
Proof witnesses, O. J. Mealey and John A. Thompson.
Final Certificate 8446, issued August 27, 1900.

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John Thomas Parker, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1107.
Covering N. ½ of NE. ¼; SE. ¼ of NE. ¼; and

NE. ¼ of SE. ¼ of Section 11, T. 14, S. R. 3. E.
Signed by mark of entryman.
Date, June 14, 1900.
Proof, August 27, 1900.
Proof witnesses, J. A. Thompson and O. J. Mealey.
Final Certificate No. 8445, dated August 27, 1900.

Samuel D. Pickens, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1111.
Covering W. ½ of SW. ¼; SE. ¼ of SW. ¼, and SW. ¼ of SE. ¼, Sec. 11, T. 14 S. R. 3 E.
Date, June 14, 1900.
Final Proof, August 27, 1900.
Proof witnesses, J. A. Thompson and O. J. Mealey.
Final Certificate, No. 8444, dated August 27, 1900.

Joseph H. Steingrandt, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1108.
Covering the E. ½ of E. ½ Sec. 10, T. 14 S. R. 3 E.
Dated, June 14, 1900.
Final proof, August 27, 1900.
Proof witnesses, J. A Thompson and George Pickens.
Final Certificate No. 8447, dated August 27, 1900.

Charles Wiley, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement, No. 1110.
Covering W. ½ of W. ½ Sec. 12, T. 14 S. R. 3 E.
Dated June 14, 1900.
Final proof, August 27, 1900.
Proof witnesses, John A. Thompson and O. J. Mealey.
Final Certificate No. 8443, dated August 27, 1900.

Alex. Gould, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1144.

Covering E. ½ of NW. ¼, SW. ¼ of NW. ¼ SW. ¼ of NE. ¼ of Sec. 24, T. 14 S. R. 4 E.

Dated, July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses, William R. Mealey and O. J. Mealey.

Final Certificate No. 8508, dated Oct. 9, 1900.

John J. Gilliland, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement, No. 1142.

Covering NW. ¼ of Sec. 28, T. 14 S. R. 4 E.

Dated, July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses, O. J. Mealey and Richard Watkins.

Final Certificate No. 8,511, dated Oct. 9, 1900.

William J. Lawrence, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1146.

Covering E. ½ of SW. ¼, S. ½ of SE. ¼, Sec. 20, T. 14 S. R. 4 E.

Mr. UELAND.—We object to evidence being received concerning the entry of William J. Lawrence, on the ground that as to the patent and land connected with that entry there is a defect of the parties defendant in this: That it **[169]** appears by the bill that the entryman is dead, and neither his heirs nor legal representatives have been made a party to the bill.

Objection overruled; exception saved.

Mr. McCOURT.—(Continues with Lawrence entry:)

Dated July 12, 1900.

Final proof, October 9, 1900.
Proof witnesses, Richard Watkins, O. J. Mealey.
Final Certificate No. 8516, dated October 9, 1900.
Louis Maynard, Sweet Home, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1150.
Covering W. ½ of SW. ¼, NE. ¼ of SW. ¼, NW. ¼ of SE. ¼, Sec. 22, T. 14 S. R. 4 E.
Dated July 12, 1900.
Proof witnesses, Jake Gilliland and O J. Mealey.
Final proof, dated October 9, 1900.
Final Certificate No. 8512, dated October 9, 1900.
Sydney H. Scanland, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1145.
Covering W. ½ of NE. ¼, NE. ¼ of NE. ¼ of Sec. 28; NW. ¼ of NW. ¼ of Sec. 27, T. 14 S. R. 4. E.
Dated July 12, 1900.
Final proof, October 9, 1900.
Proof witnesses, Richard Watkinds and O. J. Mealey.
Final Certificate No. 8509, dated October 9, 1900.
Richard C. Watkinds, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1148.
Covering W. ½ of NE. ¼, SE. ¼ of NE. ¼, NE. ¼ of SE. ¼, Sec. 22, T. 14 S. R. 4 E.
Dated July 12, 1900.
In connection with this entry, the proof notice gives the date of proof as October 9, 1900. It appears in the record that on October 17th the entryman appeared and excused himself for not making proof on the 9th day of October, in the following language: "Final proof was set for and advertised to be made on the 9th day of Oc-

tober, 1900, but that owing to a disappointment in receiving money due me with which to complete said proof and payment, I was unable to make the said proof until this time, it being the earliest date on which proof could be made after receiving my money."

Final proof, October 17, 1900.

Proof witnesses, William R. Mealey and O. J. Mealey.

Final Certificate No. 8522, dated October 17, 1900.

Richard F. Malone, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1143.

Covering NW. ¼ of Sec. 22, T. 14 S. R. 4 E.

Dated July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses, William Mealey and O. J. Mealey.

Final Certificate No. 8510, dated Oct. 9, 1900.

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Mr. LIND.—In connection with this Malone entry there is a special report. Do you plan to put that in evidence?

Mr. McCOURT.—I plan to put in the fraudulent claim report. That would include that, whatever it is. I will put that in afterwards.

James W. Rozell, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1151.

Covering N. ½ of SE. ¼, N. ½ of SW. ¼, Sec. 28, T. 14 S. R. 4 E.

Dated July 13, 1900.

Final proof, October 9, 1900.

Proof witnesses, O. J. Mealey and Louis Maynard.

Final Certificate No. 8517, dated October 9, 1900.

Cornelius N. Tuthill, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1165.
Covering S. ½ of SE. ¼ and Lots 3 and 4 of Sec. 18, T. 14 S. R. 4 E.
Dated July 19, 1900.
Final proof, October 9, 1900.
Proof witnesses, O. J. Mealey and William R. Mealey.
Final Certificate No. 8513, dated October 9, 1900.
Jasper H. Keeney, Sweet Home, Linn County, Oregon.

Mr. UELAND.—We object as not being involved in the case.

COURT.—You explained a moment ago you expect to connect it with the case?

Mr. McCOURT.—Yes, I will connect it up.

Objection overruled; exception saved.

Mr. McCOURT.—(Continues Jasper H. Keeney entry:)

Timber & Stone Sworn Statement No. 1147.
Covering E. ½ of NW. ¼, E. ½ of SW. ¼, Sec. 29, T. 14 S. R. 4 E.
Dated July 12, 1900.
Final proof, October 9, 1900.
Proof witnesses—I am unable to see their names and will omit.
Final Certificate No. 8514, dated Oct. 9, 1900.

The land embraced in the latter entry is not involved in this suit, but the record of the entry is offered in evidence in order to connect up the payments made for the land by the defendant Kribs, and the Government will show that **[171]** the entry was made under similar circumstances to those here-

inbefore offered in evidence.

And now, if the counsel will permit us, I wish to offer for the same purpose that we offered the last entry, the record of the entry of William R. Mealey; entry of Oliver Errickson; George W. Pickens, Andrew Wiley and Zillah Keeney. We don't appear to have the original papers, but we have the books of the Land Office to show the same matters.

Mr. LIND.—Wouldn't your purpose be served by simply showing that those entries, if such be the fact, were made at the same time; final proof made at the same time—just that statement. If you make that statement into the record, we will not contradict it.

Mr. McCOURT.—Then we may have the record show that William R. Mealey, Antonio Steingrandt made entry on May 22, 1900.

Mr. UELAND.—Isn't that another date from those you have in?

Mr. McCOURT.—Yes, but the proof date is the same. The record will show that the proof date of said William R. Mealey and Antonio Steingrandt is August 16, 1900.

Mr. UELAND.—That is also a different date from the others, except Thompson.

Mr. McCOURT.—Thompson and O. J. Mealey made proof on that same date. Oliver Errickson, George W. Pickens and Andrew Wiley made entry June 14, 1900, and all of the last mentioned persons made proof on August 27, 1900. Zillah Keeney made entry July 12, 1900, and proof October 9, 1900.

That all of the last-mentioned entries embraced lands in the vicinity of the other lands upon which proof was **[172]** made upon the same days, re-

spectively, as the proofs in the last-mentioned entries.

Mr. UELAND.—You know that to be a fact?

Mr. McCOURT.—Yes, I have it right here.

Now, if the Court please, I would like to have the record show the amounts of the purchase price and fees upon each of the entries, which we intend to follow by check of the identical amount given by Mr. Kribs.

COURT.—As shown by the Land Office records?

Mr. McCOURT.—Yes, shown by the Land Office record. **[173]**

Mr. McCOURT.—August 16, 1900, Certificate No. 8419, O. J. Mealey, purchase price $400, fees $10.49; Certificate No. 8420, Antonio Steingrandt, $400, purchase price, fees, $10.56; Certificate No. 8421, William R. Mealey, purchase price $400, fees $10.48; Certificate 8422, John A. Thompson, purchase price $400, fees $10.51. Total, $1,642.04.

You didn't give me that check, did you, Mr. Tanner?

Mr. TANNER.—Which is that?

Mr. McCOURT.—$1,642.04.

Mr. TANNER.—Yes, I gave you that. No, that is the one I could not find.

Mr. McCOURT.—It will be admitted by counsel, I assume, that Mr. Krib's check for $1,642.04—

Mr. LIND.—Let that stand until after recess.

Mr. McCOURT.—All right. At any rate, when we get that certificate, or that bank statement, that should go in in this case as well as in the other case to show those payments.

Mr. LIND.—Well, we will admit if it is the fact. We can probably ascertain at the noon recess.

Mr. McCOURT.—Very well. August 27, 1900, Certificate 8440, Andrew Wiley, purchase price, $400, fees $10.48. Certificate 8441, Oliver Erickson, purchase price $402.03, fees, $10.54. Certificate 8442, William W. Billings, purchase price $400, fees $10.52. Certificate 8443, Charles Wiley, purchase price $400, fees $10.45. Certificate 8444, Samuel D. Pickens, purchase price $400, fees $10.47. Certificate 8445, John T. Parker, purchase price $400, fees $10.55. Certificate 8446, Joseph O. Mickalson, purchase price $400, fees $10.49. **[174]** Certificate 8447, Joseph H. Steingrandt, purchase price $400, fees $10.48. Certificate 8448, George W. Pickens, purchase price $400, fees $10.45. Total, $3,696.46.

Mr. McCOURT.—I offer in evidence check of Fred A. Kribs upon the First National Bank of Roseburg, dated August 27, 1900, payable to J. H. Booth or bearer, for $3,696.46, endorsed by J. H. Booth. It may be offered without further identification?

Mr. LIND.—No objection.

Marked "Government's Exhibit 1."

Mr. McCOURT.—October 9, 1900, Certificate No. 8508, Alexander Gould, purchase price $400, fees $10.55. Certificate 8509, Sydney Scanland, purchase price $400, fees $10.51. Certificate 8510, Richard F. Malone, purchase price $400, fees $10.45. Certificate 8511, John J. Gilliland, purchase price $400, fees $10.51. Certificate 8512, Louis Maynard, purchase price $400, fees $10.54. Certificate 8513, Cornelius N. Tuthill, purchase price $450.58, fees

$10.52. Certificate 8514, Jasper H. Keeney, purchase price $400, fees $10.49. Certificate 8515, Zillah Keeney, purchase price $400, fees $10.57. Certificate 8516, William J. Lawrence, purchase price $400, fees $10.45. Certificate 8517, James W. Rozell, purchase price $400, fees $10.51. Total $4,155.68.

Mr. McCOURT.—I now offer in evidence the memorandum of check of Fred A. Kribs dated October 10, 1900, First Natio*an*l Bank of Roseburg, Oregon, Paid Land Office for ten claims, and containing written across the face: "C.O.P. in C.A.S. acct."; also the words "On new bank **[175]** ledger" and "on Bank's acct.," $4,155.68. Marked "paid October 10, 1900."

Marked "Government's Exhibit 2."

Mr. McCOURT.—I should have stated the mark of paid upon this other check (Government's Exhibit 1), that it shows upon its face, "paid September 1, 1900."

Mr. UELAND.—It does not look like Mr. Krib's signature.

Mr. LIND.—Well, it is a memorandum check anyway. He furnished the money apparently, whether he signed that slip or not. No objection to it.

Mr. McCOURT.—I presume it will be conceded that "C.A.S." upon the check is in Mr. Kribs' handwriting, and that it indicates C. A. Smith.

Mr. LIND.—No. That is in pencil, you know. It was evidently made at a later date. It is a memorandum. I cannot make any concession in regard to it. We know nothing about it. Mr. Kribs will explain that.

Mr. McCOURT.—I thought possibly you would, because Mr. Kribs testified in another case that C. A. S. meant C. A. Smith.

Mr. LIND.—Well, he possibly will testify then. But I know nothing about this memorandum.

Mr. McCOURT.—October 17, 1900. Certificate 8522, Richard C. Watkins, purchase price $400, fees $10.61. And in connection with the latter entry, we offer in evidence memorandum check upon the First National Bank of Roseburg, Oregon, dated October 17, 1900, on which are the words: "Paid Land Office on Richard C. Watkins, $410.61. Charge Fred A. Kribs," and having on the face of the same the further words **[176]** "C.O.P. C.A.S. deal. Also on Roseburg Bank acct.," and the further words "New Bank Ledger," marked "Paid" on the face, "October 17, 1900."

Mr. UELAND.—Whose memorandum check do you claim it to be—the bank's memorandum?

Mr. McCOURT.—I have an idea the bank.

Mr. UELAND.—I think it must be the bank's memorandum.

COURT.—Is it admitted that Kribs' signature is to that writing?

Mr. McCOURT.—No, I don't claim it is. This was given me by Mr. Kribs. It is charged to his account, presumably.

COURT.—That is a memorandum the bank made?

Mr. McCOURT.—Yes. But I received it from Mr. Kribs' possession, and the bank books show it charged to his account.

COURT.—This is the memorandum of the bank

made when it paid it out, and then returned to Kribs, I suppose.

Mr. UELAND.—Very evidently.

Mr. McCOURT.—Except the matter I read extraneous to the check itself, part of which I know to be Mr. Kribs' handwriting, part somebody else's.

Marked "Government's Exhibit 3."

Mr. UELAND.—We don't want it to go into the record that it is Mr. Kribs' memorandum, because we do not know it is, and we do not think it is.

COURT.—I understand you are not admitting anything. It is the bank's memorandum. That is all.

Mr. UELAND.—It is very evidently a memorandum the bank has made for paying out money without [177] regular checks, such as they do.

Mr. McCOURT.—They don't do it, though, without the depositor tells them to.

Mr. UELAND.—Probably not, no.

Mr. McCOURT.—I now offer in evidence reports of E. D. Stratford, special agent of the General Land Office, designated Report of Fraudulent Claim or entry in the following cases, each of which contains the affidavit of the claimant as follows: [178]

Mr. UELAND.—I want to enter an objection to that. Each of the defendants that we represent objects to that evidence on the ground that it is irrelevant and immaterial to any issues raised upon the pleadings, and has no tendency to prove any of the charges of fraud in the original entries, charged in the bill.

COURT.—Very well. The objection will be

overruled, and the evidence admitted.

Marked "Government's Exhibit 4."

Mr. McCOURT.—John J. Gilliland.

Marked "Government's Exhibit 5."

Mr. McCOURT.—William J. Lawrence.

Marked "Government's Exhibit 6."

Mr. McCOURT.—Richard F. Malone.

Marked "Government's Exhibit 7."

Mr. LIND.—In that case there is a special report covering all of the entries in the suit.

Mr. McCOURT.—That is what I am trying to get at. I see that 16 is the number of an answer.

Mr. LIND.—The number of the paragraph of the special agent's report.

Mr. McCOURT.—Yes, I see. This letter report containing general report, covering all the claims involved in this suit.

Marked "Government's Exhibit 7."

Mr. McCOURT.—Louis Maynard.

Marked "Government's Exhibit 8."

Mr. McCOURT.—Joseph O. Mickalson.

Marked "Government's Exhibit 9."

Mr. McCOURT.—Thomas Parker.

Marked "Government's Exhibit 10." [179]

Mr. McCOURT.—Samuel D. Pickens.

Marked "Government's Exhibit 11."

Mr. McCOURT.—J. W. Rozell.

Marked "Government's Exhibit 12."

Mr. McCOURT.—Sydney Scanland.

Marked "Government's Exhibit 13."

Mr. McCOURT.—Joseph H. Steingrandt.

Marked "Government's Exhibit 14."

Mr. McCOURT.—Cornelius N. Tuthill.
Marked "Government's Exhibit 15."
Mr. McCOURT.—Richard C. Watkins.
Marked "Government's Exhibit 16."
Mr. McCOURT.—Charles Wiley.
Marked "Government's Exhibit 17."
Mr. McCOURT.—John A. Thompson.
Marked "Government's Exhibit 18."
Mr. McCOURT.—O. J. Mealey.
Marked "Government's Exhibit 19."
Mr. McCOURT.—Alexander Gould.
Marked "Gov. Exhibit 20."

Mr. McCOURT.—In the latter report there is no affidavit of claimant. **[180]**

[Testimony of Fred Wodtli, for the Government.]

FRED WODTLI, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Wodtli?

A. At Foster.

Q. Linn County, Oregon? A. Yes, sir.

Q. How long have you lived there?

A. The 10th of this month it was 15 years.

Q. Do you know John Thompson?

A. Yes, sir.

Q. Judd Mealey—O. Judd Mealey?

A. Yes, sir.

Q. Will R. Mealey? A. Yes, sir.

Q. Do you know Fred Kribs? A. Yes.

Q. When did you first become acquainted with

(Testimony of Fred Wodtli.)

Mr. Kribs? A. I think it was in 1900.

Q. Do you know what time in 1900?

A. It was in the spring.

Q. How long have you known O. Judd Mealey and Will R. Mealey and Thompson?

A. I have known them for 12 or 13 years.

Q. How near to you have they lived during that time?

A. Before they moved, when they lived up in the hills, why, it was about 6 or 7 miles. I think it was nearer seven miles than six.

Q. They moved. Where did they move to?

A. Well, first they moved—the Mealey brothers moved to Foster first, and then after awhile, Mr. Thompson he move to Sweet Home.

Q. How long ago was that? **[181]**

A. I couldn't give you the dates on that.

Q. Was that before 1900? A. No.

Q. Since that time?

A. It was since that time.

Q. Had you known them intimately prior to and including up to 1900?

A. Oh, just like a neighborhood is—they know each other, befriend each other, friendly.

Q. Now, you spoke of knowing Fred Kribs. Where did you meet him first?

A. The first time I seen him it was when he came down from the hills, and I went home from church.

Q. Who was with him? A. Mr. McKinley.

Q. Do you remember what month that was in?

A. I believe it was in April.

(Testimony of Fred Wodtli.)

Q. 1900? A. Yes.

Q. You say he had been up in the hills. What hills do you refer to? A. Above Foster.

Q. Are you acquainted with the vicinity in which the timber lands are that are involved in this case—14-2, 3, and 4, some? A. Some.

Q. Well, was it from that neighborhood he came?

A. I met him at Sweet Home, but I understood he was up in that vicinity.

Q. Do you live right at Sweet Home yourself?

[182]

A. Me? No, I live in Foster.

Q. Now, subsequent to that, or after that some little time did you know of Kribs' being up there?

A. No. I have not seen him after that till, oh, it was a long time—years after.

Q. Well, now, did you know at that time, say April or May, 1900, the financial condition of John A. Thompson, William R. Mealey and O. Judd Mealey, or either of them?

Mr. LIND.—That is objected to as immaterial in this case.

COURT.—What do you expect to show? What do you claim for this?

Mr. McCOURT.—Well, I expect to show that they were in no position to carry on timber operations of considerable magnitude, which they did a little later engage in.

COURT.—You expect to show that subsequently they did engage in such operations?

Mr. McCOURT.—Yes.

(Testimony of Fred Wodtli.)

COURT.—Very well. Upon that theory I will admit the testimony.

A. Why, they have always paid their debts when they dealt with me, and of course they knew my affairs as well as I did theirs, that we none of us was wealthy.

Q. Well, what I mean is, did they have any property or money?

A. Oh, they had hill ranches. That is all I knew.

Q. Did you know of Frederick Kribs and C. A. Smith and one or two other gentlemen, going into that timber there about the 22d or 23d or 24th of May, 1900? A. Only by hearsay.

Q. You did not know it yourself personally? **[183]**

A. No. No, I have not seen none of them, but I heard it at the time.

Mr. McCOURT.—That is all. I will ask the witness when he heard that. When did you hear that?

Mr. LIND.—They did, you know. It was a notorious fact.

Mr. McCOURT.—I want to show it was about that date in May. I do not care what date in May.

Mr. LIND.—The record shows it was the latter part of May.

Mr. McCOURT.—Very well. That is all.

Mr. LIND.—No questions.

Witness excused.

Mr. McCOURT.—I may want to recall this witness a little later.

Mr. LIND.—Let me ask the District Attorney

(Testimony of William W. Billings.)

whether the last witness is the same person of that name who made an entry referred to in evidence.

Mr. McCOURT.—Yes. Yes, the same man.

Mr. LIND.—And the Government, I believe, has dismissed the suit as against him?

Mr. McCOURT.—Yes. The record shows that he paid his own money for the land. **[184]**

[Testimony of William W. Billings, for the Government.]

WILLIAM W. BILLINGS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Billings?

A. About one mile from Foster.

Q. In Linn County, Oregon? A. Yes, sir.

Q. How old a man are you, Mr. Billings?

A. Past 70.

Q. Past 70? A. Yes, sir.

Q. How long have you lived up there in the vicinity of Foster?

A. In the place that I am in now, less than one year.

Q. Well, in that neighborhood?

A. In that neighborhood, about 20 years, I would think.

Q. Do you know O. Judd Mealey? Do you know Judd Mealey? A. I do, sir.

Q. William R. Mealey? A. Yes, sir.

(Testimony of William W. Billings.)

Q. John A. Thompson? A. Yws, sir.

Q. How long have you known those men?

A. I have known those men for about 17 or 18 years—maybe 20. I cannot tell exactly.

Q. What has been your business up there, Mr. Billings? A. My business?

Q. Yes. A. Ranching—small farmer.

Q. Have a small ranch up there?

A. Yes, sir, I did.

Q. Do you know Fred A. Kribs?

A. I have seen the gentleman once in my life only. [185]

Q. Where was that, Mr. Billings?

A. At Roseburg.

Q. When? What year was that?

A. I would think about '90.

Q. 1900? A. Yes, sir.

Q. And where did you see him at that time, Mr. Billings?

A. In the anteroom next to the office at the courtroom, across the corridor from where we made entry on our lands.

Q. In the same building?

A. In the same building; yes, sir.

Q. Were you introduced to him in that anteroom? A. No, sir.

Q. Have any conversation with him there?

A. No, sir.

Q. Did not. Who else was present there in that anteroom?

(Testimony of William W. Billings.)

A. One of the Mealey boys, and I don't know but two.

Q. Anybody else?

A. If there was they were strangers to me.

Q. You didn't know anybody else there?

A. No, sir. No, sir.

Q. What was your business at Roseburg at that time?

A. I think it was on my entry, but I am not certain. I am a little mixed in being to Roseburg twice, and still I know that I was at Roseburg twice, but I cannot remember incidents.

Q. You don't recall whether that was the time when you made entry or when you made proof?

A. Sir?

Q. You don't know whether that was the time you made entry or the time you made proof?

A. I do not; but I think it was the time I made entry. There was some trouble in the entry of the land was the reason of it. The land that I had gone there to [186] enter interfered with another man's rights, some way.

Q. And what was the purpose of going out there in that anteroom then?

A. To straighten this up—to straighten this tangle in the land affairs up.

Q. Did Mr. Kribs assist in straightening the matter up?

A. They changed my numbers in a measure.

Q. You took a different quarter than you went there to take?

(Testimony of William W. Billings.)

A. Yes, sir. Not a diff*w*rent quarter. No, excuse me. I took a different eighty. I held one eighty that I started to make my entry on.

Q. Do you recall what the trouble was with the other eighty?

A. I don't know. I think they claimed it belonged to the Northern Pacific.

Q. Well, now, prior to the time you had gone down there to enter, who suggested to you that you make an entry in the first place?

Mr. LIND.—Wait a moment. That is leading. This witness does not appear to be—

COURT.—State what occurred—how you came down to make the entry.

Q. You may state how you came to make an entry of lands down there in Linn County.

A. I knew that the boys in that vicinity were making entries on land. I was a very poor man. There was $50 in it for me, which would help my family out. That is what I understood. So I went to Mr. Thompson myself,—my nearest neighbor—and asked him to make an entry on the land—asked him to put me onto a piece of land, if he could do so. He says: "Maybe I can later on," **[187]** and it was some time before he did.

Q. Now, what were you to do for the $50?

A. Sir?

Q. What were you to do for the $50?

Mr. LIND.—I wish counsel would limit it to the conversation, not inferences. What was the talk between this witness and Thompson?

(Testimony of William W. Billings.)

Mr. McCOURT.—Very well. I beg your pardon. I am trying to get along too fast.

Q. Well, when did Mr. Thompson and you next talk about it, how long before you entered?

A. I should say it was about two weeks later that he told me that he would go up and show me a piece of land in the mountains.

Q. What else did he say about it?

A. Nothing that I know of. We just appointed the day to go.

Q. Well, what had he said to you before then, when he talked to you the first time, as to what the arrangement would be?

A. Nothing at all, only that he would put me onto land eventually, he thought.

Q. And what was he to get for that? What conversation did you have as to what he was to get and what you were to do?

A. We had no conversation about it whatever.

Q. Well, then, what did you do?

A. Why, I went to Roseburg with him, made an entry on said land, and after I had proved up, received $50.

Q. Who paid your expenses to Roseburg each time? A. The Mr. Mealey's. [188]

Q. What connection did the Mr. Mealey's have with Mr. Thompson?

A. I could not tell you sir. They were in some kind of partnership in the arrangement.

Q. And do you know who attended to publishing the notice of final proof?

A. I don't remember now, sir.

(Testimony of William W. Billings.)

Q. Who informed you when it was time to go to Roseburg to make proof?

A. I think it was the Mealeys.

Q. What sort of conveyance did you take to get to Roseburg?

A. Took our own team as far as Lebanon. From there by rail.

Q. Who else were in the party?

A. Mr. Wiley, his son, who will be on the witness-stand. Mr. Parker, I believe, was with me; George Pickens; Samuel Pickens; Joseph Steingrandt. It seems as though there was one or two others, but I don't remember.

Q. State whether or not those parties were with you when you first went up there? A. Sir?

Q. When you went to enter, were the same parties along? A. Yes, sir.

Q. How long were you in Roseburg before you made proof?

A. I could not tell you. It was only a short time.

Q. Did anybody go along with you and give you any instructions as to how to make proof?

Mr. LIND.—Now, that is leading and improper. It is objected to for that reason.

Mr. McCOURT.—Well, I don't know but that was a leading question.

Q. Just tell what was done after you landed from the train [189] in Roseburg until you had made proof,—finished the transaction.

A. I cannot do it, sir. My memory is not good enough. I just remember that we went, after I had got my papers fixed out, that we went into a room,

(Testimony of William W. Billings.)

into a little small space, like a prisoner's box, something, and there we held up our hands. I am quite deaf, and we held up our hands, and the man read over something so rapidly that I could not get one word of it. I don't know what it was. We all held up our hands, all together.

Q. Then what did you do?

A. Filed out of the room; went back to quarters, and from there home.

Q. Now, then, who was there besides you men that were making proof?

A. No one was in there except the officers of the Land Office; the officers of the Land Office, the other side of this railing, that railed us off.

Q. Did either of the Mr. Mealeys or Mr. Thompson accompany you to the Land Office when you went there?

A. They went to the Land Office with us.

Q. Where were they when you were making this proof, holding up your hands and being sworn?

A. I could not tell you. I couldn't tell you.

Q. Were any questions read to you?

A. We were in the building. That is all I know.

Q. Were any questions read to you? I say were any questions read to you?

A. I don't think. If there were I don't remember.

Q. Did you answer any? How is that?

A. If there were any questions asked us, I don't [190] remember it.

Q. Now, when you filed out, where did you go?

A. Sir?

(Testimony of William W. Billings.)

Q. When you went out of the Land Office, where did you go? A. To the hotel.

Q. What occurred there, if anything? Did anything occur there?

A. Excuse me, I cannot hear.

Q. I say did anything occur there in relation to the transaction? A. No, sir.

Q. You mentioned getting $50. When did you get that? A. After I had made out the deed.

Q. When did you make the deed?

A. About—oh, it might have been two or three weeks later. Yes, it was more than that. It was more than that. It was some little time later.

Q. Well, did you make any other papers in regard to the land?

A. Yes. There was a mortgage made before the deed.

Q. Where did you make that mortgage?

A. I cannot tell you, for I don't remember it. I think it was made before Mr. Buck of Sweet Home, but I am not positive. He was a man that I made out papers before frequently.

Q. When did you get the $50, when you signed the mortgage, or when you signed the deed?

A. No, sir. When I transferred the deed to Mr. Mealey.

Q. Whom did you mortgage the land to?

A. Well, that I could not tell you now.

Q. Whom did you deed it to?

A. I don't know who the deed run to even, now.

[191]

Q. Did you know at that time?

(Testimony of William W. Billings.)

A. I did at that time, yes, sir. But it is 10 years ago, and my memory is rather faulty.

Q. Did you know Mr. Kribs in the transaction?

A. Only just that he was overlooking these papers of mine. I was told that it was Mr. Kribs afterwards. I had no acquaintance with him whatever, but as we were changing these papers around, he gave some word to the Mealey boys about it.

Q. Did you have anything to do with that at all?

A. Nothing at all, no, sir.

Q. Did you ever know a man by the name of John H. Shupe? A. No, sir.

Q. Do you have any recollection of going into a lawyer's office or some kind of an office near the Land Office after you made the proof, and signing that mortgage?

A. Never did. No, sir, I didn't.

Q. Now, Mr. Billings, how long before you made your filing if at all, was it that you had your understanding with the Mealey boys and Thompson, that you were to receive the $50?

A. I understood that before I ever entered the land, sir.

Mr. LIND.—Wait a moment. That is putting words in the mouth of the witness that are not in testimony. The witness has specifically testified that he only had a conversation with Mr. Thompson. I object to it as leading, improper and suggestive.

COURT.—The witness has not referred to any conversation he had with the Mealey boys at all. He said he understood he was to get $50, but he has not disclosed from where he got the information. [192]

(Testimony of William W. Billings.)

Q. Well, I will ask him—just tell the Court about that $50, in your own way, all about it, Mr. Billings.

A. About the $50?

Q. Yes.

Q. Why, I simply received the $50 after I returned the deed to Mr. Mealey. That was all there was about it, and as for the understanding before, I never heard Mr. Mealeys or Mr. Thompson say that they would give me $50 if I would enter the land. It was just merely understood by all the men of the country that there was $50 in it if we took land.

Q. Well, now, what did you say to Thompson when you went to see him? A. Sir?

Q. What did you say to Thompson when you went to see him?

A. There was nothing said about the money whatever.

Q. What did you say?

A. Why, I asked him merely to put me upon a piece of land. And he told me—he says: "I don't know." He says, "Maybe I can eventually." Probably hadn't the land—run out—didn't know where he could locate me at the time. It was three or four weeks before he did locate me.

Q. What was that understanding in the community there as to what should be done to earn the $50?

Mr. LIND.—One moment. That is objected to as incompetent, irrelevant, and leading.

Mr. McCOURT.—If the Court please, in this case, the defense is, or will be, that it was generally understood among entrymen, or that is among the people, that they could [193] take up a timber claim, and

(Testimony of William W. Billings.)

that they could go and sell it to Mealeys and Thompson and get $50 for it. Now, I want to show, first, what that understanding was, if there was such an understanding, and the fact that it was circulated by the Mealey boys among this little community, consisting of a few people only, who were very poor, who would jump at the chance to earn $50; and that these people came to the Mealey boys—the Mealey boys knowing that they understood, when they came to them, that if they did locate them, that they located them upon condition that the land be deeded to the Mealey boys, and I take it that such an arrangement is not a legal one,—where the advertisement is given out for the purpose of getting those fellows to come in there, and they show when they get there, that they have heard this little report that the Mealeys put out, then they come there, and the Mealeys put up all the expenses, handle the people really as mere instruments, in taking more than 160 acres of land, to wit, 1760 acre tracts in this case for the same people to wit: Fred A. Kribs, C. A. Smith Lumber Company, or C. A. Smith perhaps, and the other defendants involved in this case. I want to get that out fully. It, by leaving a part of it out, might be a legitimate arrangement.

Mr. LIND.—Your Honor, it would be manifestly unfair to the defendants in this case, to have such rumors go into the record, if there were any. Now, as a matter of fact, the conditions were very different as the testimony will disclose, and as it has already disclosed, in the reports before your Honor. [194] There was a general scurry among claimants, the

(Testimony of William W. Billings.)

Northern Pacific Company was locating land, these settlers had been there a great many years, the Mealeys had helped in the surveys, and they were familiar with the lands. These old settlers wanted to get a piece of timber land.

Mr. McCOURT.—No, they did not. They wanted to get $50.

Mr. LIND.—I grant that the money end was what they had in view. That is not true of all of them. It is true of some of them. The Mealeys were the ones who were familiar with them—helped the Government survey, cruised the land, and they went and got them to locate them. The Mealey boys did and Thompson did locate them, raised the money and subsequently the entries were shown. And when it came to that part of the transaction, I think it will become very apparent to the Court that some of these mountaineers perhaps were displeased somewhat, got the short end of the bargain. But I object to any evidence except facts. That we want to get. We want every scrap of fact.

COURT.—I think the circumstances under which these people made their filings, or made their entries, what prompted them to make them is competent in this case for the purpose of tending to show that the original transaction had its inception in fraud. If these people entered this land for the purpose of conveying the title to someone else, then it was not a *bona fide* entry, and would be fraudulent as far as they were concerned. Therefore, I suppose it is competent in the case for the Government to show the rumors or reports in the **[195]** community

(Testimony of William W. Billings.)

that induced these people to act for the purpose of determining their attitude in the matter, and what they were attempting to do. I suppose the Government has a right to show what motives or understanding or influences operated upon these people—whether it was an honest desire to get this land for themselves, or to be a mere conduit, through which the title should pass to somebody else, and they receive the $50. For this reason the Government has a right to examine this witness upon that question.

Whereupon recess was taken until 2 P. M. **[196]**

Portland, Oregon, April 26, 1910, 2 P. M.

WILLIAM W. BILLINGS, resumes the stand.

Direct Examination (Continued).

Q. (Read.)

Mr. LIND.—That, I believe, was objected to as leading, and as assuming a state of facts of a rumor in the community which is not shown to have been current.

COURT.—The objection is overruled.

A. Well, the sale of the land—I sold the land for $50.00.

Q. You spoke of an understanding in the community there. What was that understanding as to what you should do in order to get the $50?

A. Deed them the land.

Q. Who?

A. Well, I don't know who I deeded it to, sir. I don't know who I deeded it to, now.

Q. I understand, but who was it the understanding that the land was to be deeded to, there in the community?

(Testimony of William W. Billings.)

A. Who was it that it should be deeded to? I don't know. I don't know whether there was any understanding. Mr. Kribs, I suppose, was the man that it was going to—all supposed that it was going to him. These others were mere locators.

Q. Well, who were these others with whom you had to have the transaction?

A. Mr. Mealey, Mr. Thompson.

Q. Do you recall, Mr. Billings, having made an affidavit at the house of Fred Wodtli some time later, in regard to that claim? A. I do.

Q. State the circumstances under which that was made, and under which you went to Wodtli's house.

[197]

Mr. UELAND.—Will you please fix that time, Mr. District Attorney?

Mr. McCOURT.—Yes, I will fix it.

A. I don't know, but I think it was Mr. Mealey's.

Mr. UELAND.—Just wait a minute.

COURT.—Just wait a minute.

Q. Do you remember about the date that was?

A. I do not.

Mr. UELAND.—Fix it in your question. That will be satisfactory.

Mr. McCOURT.—Well, let me get the date then. The affidavit I speak of purports to have been made on the 7th day of November, 1901.

Mr. UELAND.—The defendants we represent object to that as immaterial, and as not tending to prove any of the averments in the bill as to fraud in the original entry.

COURT.—The objection will be overruled. That,

(Testimony of William W. Billings.)

I understand, is the report of the Special Agent, that was introduced in evidence.

Mr. McCOURT.—Yes, your Honor.

Q. Now, state the circumstances, Mr. Billings, under which you went to Wodtli's house to sign that affidavit, or make it, and what occurred there.

A. I received word, I think it was through the Mealey's, but I am not certain, to put in an appearance there, at this time that you mention, I suppose, and did.

Q. Go ahead and state what occurred when you got there.

A. We stood around the yard for two hours or more, I think, before I was called, and when I went in I gave in my evidence, as you have it there, as you have it in writing now.

Q. Who was there when you went into the house to give your evidence? **[198]**

A. I don't know those officers, sir. I never did know them.

Q. How many persons were there?

A. No one except the officers and Mr. Wodtli's—part of Mr. Wodtli's family. There was two officers. I don't know who they were.

Q. Two went in at the same time you did?

A. Sir?

Q. You say there were two officers?

A. No, no. There were two officers in there—I don't know who they were—and the stenographer.

Q. Do you recall, Mr. Billings, stating at that time that you had paid John Thompson $40 or $50 for locating you?

(Testimony of William W. Billings.)

A. I don't remember anything about it, no, sir.

Q. Don't remember that? A. No.

Q. Do you remember anything about stating the amount that you had received for the land?

A. I think it was $650—maybe $700.

Q. Do you recall now why you made that statement? A. Through questions.

Q. What? A. Through being questioned.

Q. Well, have you received any such sum for the land? A. I had not.

Q. I will ask you if Mr. Mealey—Mr. Judd Mealey, Mr. William Mealey, and Mr. Thompson, were there at that time at the Wodtli's house?

A. I don't think Mr. Thompson was there; as near as I remember he was not.

Q. What about the Mealey brothers?

A. Both the Mealey brothers were there.

Q. Did you and the other persons there at that time have **[199]** any conference with the Mealeys before you went into the room to make the affidavit?

A. No, sir, I did not.

Q. How many other persons were there at that time?

A. Well, I would say there were about 20.

Q. Can you name them? A. No, I cannot.

Q. Did you receive any compensation for making that affidavit, Mr. Billings?

A. About $3.00, I believe; $3.00 or $4.00 at the outside.

Q. Who paid that to you?

A. That was just for my board and day's labor. I think William R. Mealey paid it to me. He gave it

(Testimony of William W. Billings.)

to me. He says, "That will do for your day's board."

Mr. McCOURT.—I offer in evidence a mortgage bearing date the 27th day of August, 1900, William W. Billings to Frederick A. Kribs, purporting to secure a note for $600, payable ninety days after date, covering the land included in Mr. Billings' entry.

Marked "Government's Exhibit 21."

Mr. McCOURT.—I now offer in evidence a deed of William W. Billings and Sarah R. Billings, his wife, to Frederick Kribs, for the same land, bearing date the 1st day of September, 1900.

Marked "Government's Exhibit 22."

Mr. McCOURT.—Both of the last instruments offered being certified copies of the public records of said mortgage and deed, of Linn County.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Billings, you spoke about an **[200]** understanding in the neighborhood. Who spoke to you about the matter, if you recall?

A. I couldn't tell you, sir. It was generally spoken of among the people there. I could not tell you where I first heard it.

Q. What was that that was generally spoken of among the people?

A. Well, if we would take this land that we could receive $50 for it; if we would take this land and deed it over, we could receive $50 for it. If we didn't take it, it lay there intact, and nobody got anything for it in the country of the poorer class.

Q. You said you heard something about Kribs buying land. When did you first hear of that?

(Testimony of William W. Billings.)

A. I don't know. It was something about that same time.

Q. Well, about the time you made your proof?

A. No, about the time that we were taking this land.

Q. Well, did you agree to sell it to Kribs?

A. We were to sell it to anybody that would buy it, yes, sir.

Q. But you never agreed to sell to Kribs?

A. I never did at that time, no, sir.

Q. Did you agree to sell to anybody until you made your deed?

A. No, sir. But I knew I would have to, because I could not pay out on the land.

Q. And you were willing to?

A. I was willing to, yes, sir.

Q. If you had not sold, you would probably have lost it on the mortgage?

A. I certainly would have done so.

Q. Did you know how much the land would cost at the Government price? **[201]** A. $250.

Q. How much an acre?

A. No, I am mistaken. It was $2.50 an acre.

Q. And how many acres in your entry?

A. 160 acres.

Q. That would be $400? A. Yes, sir.

Q. Besides the fees?

A. Yes, sir. From all I was worth in the world, I could not have raised that $400.

Q. And still you wanted the benefit of your land right? A. Certainly.

Witness excused. **[202]**

[Testimony of John T. Parker, for the Government.]

JOHN T. PARKER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Parker?

A. Well, sir, I don't live anywhere, particularly.

Q. Where were you living in 1900?

A. I was living up in Sweet Home.

Q. Right at Sweet Home?

A. Yes, right at Sweet Home?

Q. And how long had you been living there at that time? A. Oh, about five or six years.

Q. Do you know William R. and Judd Mealey?

A. Yes, sir.

Q. Do you know John Thompson?

A. Yes.

Q. Did you know them at that time?

A. Oh, yes.

Q. Did you know Frederick Kribs at that time?

A. No, sir.

Q. When did you first meet him?

A. Well, the first time I seen Mr. Kribs, he was pointed out to me on the train and they said it was Mr. Kribs. That is all I knew about it.

Q. Where were you going, when you saw him on the train? A. I was going to Roseburg.

Q. For what purpose?

A. I don't remember now whether it was to file on the land, or whether it was to prove up,—I couldn't say—one or the other. **[203]**

(Testimony of John T. Parker.)

Q. Who pointed him out to you?

A. Well, now, I am not able to answer that question.

Q. Was William R. or Judd Mealey on the train at that time?

A. Yes, sir; I think they was both on.

Q. Do you remember the incident of Frederick A. Kribs and C. A. Smith coming out there to Foster or Sweet Home in the latter part of May, 1900, to look at timber?

A. No, sir. I never heard of Mr. Smith.

Q. Didn't know him at all? A. No, sir.

Q. You took up a timber claim up there, didn't you? A. Yes.

Q. Sometime in 1900? A. Yes.

Q. Please tell the Court the circumstances leading up to your taking the claim, the different steps that you took in it as it progressed.

A. I would hate to undertake to tell all the steps.

Q. Well, tell all you can think of.

A. Well, I don't know—it has been so long ago, I don't remember very much about it. I know that I went out there and took up a claim, and that is about all.

Q. Whom did you see before you went out to take it up?

A. I don't know. I seen several men.

Q. Well, did you see John A. Thompson or Judd or Will Mealey?

A. I saw William Mealey. He went out in the timber with us.

Q. Well, did you have any conversation with Mr.

(Testimony of John T. Parker.)

Mealey, or either of the Mr. Mealeys, or Mr. Thompson, relative to taking up the claim, before you went to take it up?

A. Oh, no; only just simply I told them I wanted to go with them when they went out to take up a timber claim.

Q. And what led you to go and tell them that?

A. Well, because I wanted a timber claim.

[204]

Q. Well, you went out to see the claim with them?

A. Yes, sir.

Q. Which of the Mealey boys went to see the claim? A. William.

Q. And what did you do after you saw the claim?

A. Went back home.

Q. Well, how long after that was it before you went to Roseburg?

A. I couldn't say. I don't remember much about that. I don't know just how long it was.

Q. Well, about how long?

A. I thought it was fourteen months; but I heard since I come to Portland it was only about fourteen weeks.

Q. Well, but you went to Roseburg twice, didn't you?

A. Yes, sir. Oh, you mean before we went to file?

Q. Yes, when you went to file.

A. I suppose it was about ten days—something like that.

Q. Well, now, how did you get to Roseburg?

A. Well, I went part of the way by land, and the

(Testimony of John T. Parker.)

other part by railroad.

Q. And what part did you go by team?

A. We went—let's see. When we went to file we went to Lebanon by team, and then from there to Albany and back on the train.

Q. Whose team did you take to Lebanon?

A. Well, for myself I went on the stage, on the United States mail stage.

Q. Who was in the party, when you got on the train, that you went in?

A. Well, as near as I remember, there was William and Judd Mealey, and Mr. Billings and Joe Steingrandt, and I **[205]** don't remember now whether Mr. Mickalson got on the train that we did or not.

Q. Mr. Who?

A. Mr. Mickalson. But there was Charlie Wiley and Andrew Wiley and myself and Mr. Billings and Joe Steingrandt, if I remember right.

Q. Quite a number of you? A. Yes.

Q. And how long did you stay in Roseburg?

A. Well, we got to Roseburg some time in the night, and we left there the next evening, I think, or the next morning. Stayed over night, I believe, though. I would not be certain about that.

Q. What did you do during the day you were there?

A. Well, I would hate to tell that.

Q. Well, did you go to the Lond Office?

A. Yes.

Q. That is all I want to know. I don't care what else you did.

(Testimony of John T. Parker.)

A. Yes, went to the Land Office. Went to saloons a good many times.

Q. Well, did you go to the Land Office?

A. Well, we went to the Land Office, I think, about nine o'clock in the morning, if I remember right, and there was quite a crowd there, and we had to wait. I think it was afternoon, if I remember right.

Q. Did you file on the land while you were there?

A. Yes, sir.

Q. How did you secure the numbers of the land upon which you made your filing, and whom from?

A. From William Mealey.

Q. Who paid your expenses on that trip? **[206]**

A. Well, now, that is a pretty hard question for me to answer.

Q. Well, did you pay them?

A. No, I didn't pay them myself.

Q. Did you have anything to do with publishing the notice of when you should make proof?

A. No.

Q. Who attended to that?

A. I couldn't say.

Q. How is that? A. I couldn't tell you.

Q. Who, if anybody, informed you when it was time to make proof?

A. Well, I think Mr. Mealey.

Q. Which one of the Mealeys?

A. William.

Q. William? A. Yes.

Q. Well, after you were notified that it was time to make proof, what was the next? What was the

(Testimony of John T. Parker.)

proceeding then?

A. The proceeding then was to go to Roseburg and prove up.

Q. Did the same party go that had gone with you on the filing trip? A. Yes, sir.

Q. Were the Mealey boys along, and Mr. Thompson?

A. Yes, I think so, yes. I think they were there.

Q. How long did you stay in Roseburg that time?

A. Well, I think we got there along in the morning, and we come back the same evening—I think we did—the same night.

Q. Well, describe what you did in making proof, now, how it was done, and who officiated at it, and all about it.

A. You mean who we proved up before?

Q. Yes, and how you went in there, whether you went in one at a time or a dozen at a time, or how you did it. **[207]**

A. Well, I went in one at a time. I proved up before a lady—I don't know who it was.

Q. Did the other gentlemen who went up with you all go to the Land Office at the same time you did? A. Oh, I think so, yes.

Q. They were there waiting to make their proof?

A. Yes.

Q. Where were the Mealey boys and Thompson during this episode?

A. I don't think—I don't remember whether Mr. Thompson was with us on that trip or not. I couldn't say.

Q. After you had made your proof, what did you

(Testimony of John T. Parker.)

do? A. I went home as quick as possible.

Q. Well, did you go anywhere after you left the Land Office?

A. Oh, yes, went back to the hotel.

Q. Did you go into any office or little room anywhere? A. Yes, I think we went into a room.

Q. Who was in that room?

A. Well, Mr. William Mealey, if I remember right, and another gentleman,—a lawyer or something; I don't know what.

Q. Was Fred Kribs there?

A. No, sir, I didn't see Mr. Kribs.

Q. Didn't see Mr. Kribs? A. No, sir.

Q. Do you remember what this lawyer's name was? A. No, I do not, no.

Q. Was that in the same building in which you had made proof? A. Yes, I think so.

Q. What did you do in this lawyer's office?

A. Well, I signed the deed to the land.

Q. How long would that be after you had made proof?

A. Well, I don't know just how long it was. Not long.

Q. You walked right out of the Land Office into this other **[208]** office, didn't you?

A. I think so, yes.

Q. And when you signed the deed, what did you receive, if anything? A. I received $50.

Q. Who paid it to you?

A. William Mealey paid me the money.

Q. How did he pay it—by check or cash?

A. He just handed me the money.

(Testimony of John T. Parker.)

Q. In the presence of the lawyer?

A. Well, I could not say now as to that. I don't thinko so.

Q. Were there any of the others there, of your neighbors, in there at the same time you went in to make your deed? A. No, sir.

Q. Where did you go when you got your deed made? Did you wait around there for the others or go away?

A. I went right down back to the hotel.

Q. Who paid your hotel bill?

A. I couldn't tell you.

Q. Don't know? A. No.

Q. Did you come on back home then?

A. Yes, sir.

Q. Before you went to see the Mealey boys about taking a claim, had anyone talked to you, or had you heard anyone talking about the amount of money that you might receive for taking a claim?

A. Yes, I heard several people talking about it?

Q. Who?

A. Well, I couldn't tell who they was. A good many come up from here, and a good may came up from Salem, **[209]** to take timber claims, and myself and Mr. Wiley talked between ourselves most about it. And he says, "What is the use of us sitting here and all these people coming in, inquiring here and taking up all this land, and we get nothing out of it"? He says, "We just as well have $50 as to wait here till it is all gone, and get nothing." I says, "Very well, the first time I see the Mealey boys I will tell them I want a claim." And he says, "All

(Testimony of John T. Parker.)

right." That is about all there was to it. When they got ready to go into the timber, they let us know, and we went with the crowd.

Q. What was it understood that you were to do in order to get the $50?

Mr. LIND.—Now, wait a moment. That is not a proper question.

Mr. McCOURT.—I withdraw that now, just a moment. I will change the form.

Q. What was it reported that you would have to do in order to get the $50?

A. Well, it was reported that we would have to take up the claim, and file on it, and prove up on it, and get a patent before we could sell it to anybody.

Q. What were you to do to get the $50?

A. What did I do?

Q. What was the $50 to be for?

A. Well, I suppose it was to be for the claim. I don't know.

Q. Now, that report was the occasion for your going to see the Mealey boys? Do you recall, some year or so later—I will direct your attention to the date, 11th day of November, 1901, appearing at the house of Fred **[210]** Wodtli in connection with that claim?

A. Yes, sir. I don't know what time in the month it was.

Q. What caused you to go there?

A. Well, I was sent for to come there.

Q. Who sent for you?

A. The Mealey boys, I suppose. I don't know.

(Testimony of John T. Parker.)

Q. What occurred when you got there, and who was there?

A. Well, I don't remember who was there. There was some officers there.

Q. How is that?

A. There was some officers there.

Q. How long did you remain there?

A. Oh, two or three hours, I suppose; something like that.

Q. And what did you do while there?

A. I made out an affidavit for the land.

Q. Did you have any conversation with anybody in relation to the affidavit you were to make, before making the same?

A. Yes. I and William Mealey talked about it as we went down from Foster down to the house.

Mr. LIND.—I could not hear the witness. What was your answer?

A. I say, Mr. William Mealey and I talked about it on the road down from Foster, down to Mr. Wodtli's.

Q. How far was it from Foster to Mr. Wodtli's?

A. Oh, I suppose it was about half a mile.

Q. Did Mr. Mealey discuss with you what answers you should make in your affidavit?

A. Yes, he told me how to answer the questions.

Q. Did he have a form of affidavit with him?

A. No.

Q. What did he say they would ask you about?

[211]

A. Well, he said they would ask me where I got

(Testimony of John T. Parker.)

the money, and how I got the money to prove up.

Q. Do you know who you deed the land to?

A. No, sir, I do not.

Q. How is that? A. No.

Q. Did Mr. Mealey make any statement to you as to what you should say in regard to a location fee? A. Yes.

Q. What did he tell you?

A. He told me to tell them that I paid $50 for locating me.

Q. You hadn't paid any $50 location fee, had you? A. No, I hadn't paid anything.

Q. What did he tell you to say in regard to the amount of money you had received for the land, if you remember?

A. That I had sold stock, cattle, and horses and hogs.

COURT.—Speak a little louder.

Q. Speak a little louder.

A. That I sold cattle and horses and hogs to pay for the land.

Mr. LIND.—I can't hear one word of that.

COURT.—Speak a little louder. The Governor can't hear it.

A. I say, he said to tell them I had sold stock to pay for—to get the $400—cattle and horses and hogs.

Q. What did he tell you to say as to the amount you had received for the land when you sold it?

A. There was nothing said about that; nothing said about that.

(Testimony of John T. Parker.)

Q. Do you recall answering the special agent there **[212]** that you had received $840 for the land?

A. I don't think so. I don't think I was ever asked that question. Not that I remember of.

Q. Did you see Mr. Kribs at all in relation to deeding your land? A. No, sir.

Q. I notice in your affidavit here you answer that it was a Seattle man you sold those hogs to. Did Mr. Mealey tell you to tell that? A. No.

Q. That was your own?

A. That was my own.

Q. You sign with a mark, don't you, Mr. Parker?

A. Yes, sir. Yes, that is all right. (Speaking of mark on paper.)

Q. I notice upon this affidavit that there is a party by the name of J. Van Zante appears as a witness, together with William R. Mealey, to your mark. Do you remember any such person being there? A. No, I don't remember.

Q. How many men were there in the room where you gave the affidavit?

A. I don't remember now.

Q. Was there more than one?

A. Yes, there was more than one.

Q. More than two?

A. Yes, I think there were three or four, anyway.

Q. Was Mr. Mealey in there when you gave your affidavit? A. I think so, yes.

Q. Which Mr. Mealey?

(Testimony of John T. Parker.)

A. I think William was there in the room somewhere. **[213]**

Q. (Mr. McCOURT.) I offer the deed in evidence in connection with this entry. The deed is the 27th day of August, 1900.

COURT.—Was there any mortgage in this case?

Mr. McCOURT.—No mortgage, apparently.

The deed is marked "Government's Exhibit 23."

Q. Was there any lady there when you took that affidavit? A. No.

Q. Running the typewriter?

A. The typewriter, that is all.

Q. Did you know who she was?

A. No, sir.

Q. Do you know now? A. No, sir.

Q. What, if anything, did you receive when you gave that affidavit?

A. I didn't receive anything, that I remember of.

Corss-examination.

(Questions by Mr. LIND.)

Mr. Parker, when you and Will Mealey were going over to the place where you made this affidavit, were you talking seriously or joshing?

A. Well, I don't know; we was just laughing and talking.

Q. Well, isn't it a fact, that you said between you, back and forth, that if this special agent went to asking any funny questions, you would give him funny answers? A. That is what he said.

Q. How?

A. That is what he said. He told me just what

(Testimony of John T. Parker.)

questions they would ask me, and what I should say. **[214]**

Q. Well, you suggested it yourself that you would handle them? A. No, sir.

Q. Didn't you say to Will Mealey that if he went so asking funny questions, you would answer him in the same strain, or words to that effect?

A. Well, I might have said if they went to asking questions that they had no right to ask, I might answer them.

Q. Now, did you understand in that conversation that Will Mealey wanted you to swear to any falsehoods?

A. Well, I don't—no, not particularly, no; I don't know as he did.

Q. No, I suppose not. You say you made your deed at Roseburg? A. How is that?

Q. You made your deed, after you had made your final proof at Roseburg? A. Yes, sir.

Q. Who spoke to you about making that deed?

A. Well, sir, I don't remember now.

Q. Wasn't it Will Mealey?

A. I think so, yes.

Q. What did he say to you?

A. Why, he said that I could come and sign the deed now.

Q. Didn't he tell you that money to pay for the land had been raised either by deed or mortgage?

A. I don't remember whether there was anything said about a mortgage or not. I don't remember. I don't think so.

(Testimony of John T. Parker.)

Q. You know some of them raised the money by giving a [215] mortgage?

A. Yes, I know some of them did.

Q. And some of them sold right on the spot?

A. Yes.

Q. Had Will Mealey ever said one word to you about selling, or about a deed, before that time?

A. No, sir; no.

Q. Had anybody else? A. No; no.

Q. Now, who is Wiley? You said you and Wiley had a talk about using your timber claim rights.

A. That is an old gentleman that I had known for years, but he is dead now.

Q. He is dead now? A. Yes.

Q. Did he also take a claim?

A. Yes, he went right along with the crowd.

Q. How long was that before you went to see Mealey?

A. Oh, we talked about that for a month or two.

Q. What was your object? Why did you talk about it?

A. Well, I didn't have any much idea of taking up a timber claim for a long time. I didn't know whether I would be doing something wrong or not, or whether it was all right. And him and I talked it over, and he says, "The Government gets its money for the land." "Well then," I says, "I reckon we won't be doing anything wrong if we take up a claim."

Q. You didn't intend to do anything wrong?

A. No, sir. If I had, I wouldn't have taken up the claim.

(Testimony of John T. Parker.)

Q. No.

A. If I thought I was swindling the Government, out of anything. But I supposed when it got its money, the price, that that settled it. **[216]**

Q. And you felt that you could make some profit on it for yourself? A. Yes, sir.

Q. And you had never exercised your right, and everybody was taking claims, and you wanted to get in yourself, and get a claim?

A. That is it exactly; because they was going every day right out from under our nose. We sat there till all the good timber was gone before we ever made an effort—people coming in from the east and taking it up.

Redirect Examination.

Q. Didn't Mr. Mealey also tell you not to answer any more than you could help when you were before that special agent? A. No, sir.

Q. Say just as little as you could get through with?

A. I don't think he ever said anything about that at all. I don't remember, if he did.

Q. You were not married at that time, were you?

A. No, sir.

Witness excused. **[217]**

[Testimony of William J. Lawrence, for the Government.]

WILLIAM J. LAWRENCE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Lawrence?

A. Foster, Linn County, Oregon.

Q. How long have you lived at Foster, Mr. Lawrence?

A. Oh, about 14 years.

Q. And were you living there in 1900?

A. Yes, sir. No, I lived at Sweet Home in 1900.

Mr. UELAND.—Ask him how far Sweet Home is from Foster.

Q. Yes, how far is Sweet Home from Foster?

A. Three miles.

Q. West or east? A. West.

Q. Do you know William R. and Judd Mealey and John A. Thompson? A. Yes, sir.

Q. Did you know them in 1900?

A. Yes, sir.

Q. And prior thereto? A. Yes, sir.

Q. How far did the Mealey boys live from you?

A. I don't remember whether they lived up on their hill ranch then, or not. If they did, why they lived about 12 miles. Yes, they lived about that far away. I remember now that they did live up on the hill.

Q. Do you know F. A. Kribs? A. No.

(Testimony of William J. Lawrence.)

Q. You were living right at Sweet Home at that time?

A. Yes, sir. Half a mile southeast of Sweet Home. We called it Sweet Home.

Q. You took a timber claim, Mr. Lawrence, up there in June, 1900? Tell the Court the circumstances leading [218] up to making the entry, and subsequent proceedings.

A. Well, all I can tell about it, everybody was taking a timber claim, and I wanted one too, and I went and got it, the same as the rest.

Q. Whom did you go to see about it?

A. John Thompson.

Q. What conversation occurred between you and Mr. Thompson relative to it?

A. Well, I asked him if there was any chance for me to get located on a timber claim, and he told me he didn't know—he would see, and as soon as there was an opening, why, he would give me a show.

Q. Well, what occurred afterwards?

A. Well, afterwards we went up and got located, and went from there to the Land Office.

Q. Did you have any conversation with Mr. Thompson about what there would be in taking the timber claim?

A. Yes; but he didn't know.

Q. What did he say about that?

A. Well, I don't remember now what the exact words were. I don't remember.

Q. Well, what was the substance of it? What understanding did you and he reach before you

(Testimony of William J. Lawrence.)

started to make the filing?

A. Well, I don't know of any understanding, only that he took me up there, and located me, and give me a chance to go.

Q. Well, what did you do?

A. Well, we went to the Land Office. First we went up and got located—he showed me the land, and then we come back to Sweet Home, and stayed all night, and **[219]** then started for the Land Office.

Q. Who was in the party?

A. Well, there was William and Judd Mealey, Alex Gould, Malone, Richard Watkins, Jacob Gilliland, and I don't remember any of the others. There was a few others, but I don't remember just who they were.

Q. When you got to Roseburg, what did you do?

A. I think we stayed all night. Next morning went in to the Land Office. Then, after we filed on the land, why, I think we crossed the street and signed some mortgages or something, signed something—I don't know what it was—I think that is what it was.

Q. In whose favor? A. I don't know.

Q. Well, when you got the mortgage signed, what transpired?

A. Well, we stayed all night that night, and went home the next day.

Q. What did you receive upon signing your mortgage? A. I didn't receive anything.

Q. You didn't? Well, how long was it before

(Testimony of William J. Lawrence.)

you received some money?

A. How long was it?

Q. Yes.

A. It was after it was sold—after I made final proof.

Q. Well, how long after final proof?

A. I think it was about a week—something like that.

Q. And whom did you sell to?

A. Well, I never knew till just the other day.

Q. Who told you the other day?

A. That gentleman right there beside of you showed **[220]** me the papers.

Q. Whom did you think you were selling to?

A. Well, I didn't know, nor I wasn't caring who I sold.

Q. Why didn't you care?

A. Why, it didn't make any difference to me.

Q. How much money did you get?

A. I got $50.

Q. How much money did you understand you were going to get when you made the entry?

A. I didn't know. There never was no understanding.

Q. What was the report going about the community there?

A. Well, everybody was talking like they was going to get $50.

Q. Whom were they going to get it from?

A. I don't know.

Q. What? A. I don't know.

(Testimony of William J. Lawrence.)

Q. Who was conducting the business of leading men up to receive $50?

A. I never asked them.

Q. Why did you go to Judd Mealey, or the Mealey boys and Thompson? A. Why didn't I?

Q. Why did you go to them?

A. I never went to the Mealey boys. I went to Thompson.

Q. Went to Thompson?

A. I went to him to get located.

Q. You understood that Thompson and the Mealey boys were the people who were making it possible to get this $50? A. Of course.

Q. Yes. And they were the people you looked to for the **[221]** money?

A. Well, I know I got it through them, by going at it that way, of course.

Q. Yes. You understood that before you made the filing? A. Yes, sir.

Q. Who paid your expenses to Roseburg when you first went? A. Why, the Mealey boys.

Q. And when you went the second time?

A. The Mealey boys.

Q. Were you out a single cent of money on the claim in any way? A. I was out no money; no.

Q. Did you understand, when you entered upon the transaction, that you would not be out any money?

A. Well, that was the talk. I didn't understand it. That is what the rest of them all said.

Q. Well, if you had thought you were going to be out any money, would you have undertaken it at all?

(Testimony of William J. Lawrence.)

A. I don't think I would.

Q. What were you doing at that time?

A. Ranching.

Q. Did you own a ranch?

A. No, sir, I didn't own anything.

Q. Didn't own anything. Which of the Mealey boys was it paid you that money?

A. I don't remember which one it was, but I think it was William. I don't know.

Q. Did you sign any note there at Roseburg when you made that mortgage?

A. Not that I know of.

Q. Did Kribs or anybody else ever get a note from you for $700? **[222]**

A. Well, not that I knowed of, till the other day here I seen that there was a mortgage against me for $700.

Q. Did you know that you gave a mortgage for $700 till the other day when you were told?

A. Not at the time, no. I didn't know it till just the other day.

Q. Where did you go when you made proof there?

A. Went right across the street from the Land Office.

Q. From the Land Office? A. Yes.

Q. In whose office, do you recall?

A. I don't recall.

Q. Who was in there, do you know?

A. There was nobody there only the crowd that was with me.

Q. Were they all there?

A. We all went in together.

(Testimony of William J. Lawrence.)

Q. Were you married at the time?

A. Yes, sir.

Q. Where was your wife?

A. At home, at Sweet Home.

Q. Did you receive any money there at that time of any kind? A. No, sir.

Q. Do you remember the amount that the mortgage was given for, that you signed?

A. Yes, I do now, since I seen it—$700, I think it is.

Q. Well, had you borrowed any $700 from anybody? A. Had I?

Q. Yes, at that time.

A. Not that I know of.

Q. Did you know the purpose of the mortgage that you were giving?

A. I didn't know I was giving one.

Q. You didn't?

A. I never knew anything about that mortgage till I seen **[223]** it the other day here.

Q. What did you think you were doing over there in that office? What is your recollection that you were there for, leaving out the fact you have seen this mortgage?

A. Just following the bunch, doing as they done.

Q. Who was directing the bunch?

A. William Mealey.

Q. Why were you following them?

A. Well, that is where we was directed to go. I was just following the crowd.

Q. I call your attention to an original instrument, which appears to be a mortgage from you to F. A.

(Testimony of William J. Lawrence.)

Kribs for $700, covering the land embraced in your entry, purporting to have been made the 9th day of October, 1900; also original note described in the mortgage; and ask you if that is your signature upon the mortgage. A. Yes, that is mine.

Q. How about your signature upon the original note? A. I don't remember that.

Q. Isn't that your signature?

A. Of course that is mine.

Q. Yes, you signed that name there.

A. I don't know whether I wrote that name or not. It is just like I would write it, if I wrote it. I surely did.

Q. Well, didn't you deliver that mortgage and that note to William J. Burns a few years ago? Do you remember anything about that?

A. I don't remember. I don't remember anything about the mortgage at all.

Mr. McCOURT.—I offer it in evidence in connection with the witness' testimony. **[224]**

Mr. LIND.—No objection.

Marked "Government's Exhibit 24."

Q. How long after you got back was it that you signed the deed?

A. Oh, I don't remember just how many days. I think, though, it was about a week or ten days—something like that.

Q. At your home?

A. At the home I had rented, where I resided.

Q. Who brought the deed there for you to sign?

A. I don't remember.

Q. Do you remember going before a man by the

(Testimony of William J. Lawrence.)

name of Buck, to sign it?

A. Yes, that is where we went to sign it.

Q. Who else was there signing deeds at that time?

A. I don't remember of anybody.

Mr. McCOURT.—I offer the deed in evidence.

Marked "Government's Exhibit 25."

COURT.—What is the date of it?

Mr. McCOURT.—The date of it is October 15th; filed for record the 20th of October, 1900.

COURT.—Is the deed to Kribs?

Mr. McCOURT.—Yes, deed to Kribs.

Q. Do you remember, about November, 1901, appearing at Fred Wodtli's house?

A. No, never appeared at Fred Wodtli's house.

Q. Where did you go?

A. Hans Wodtli's—Fred Wodtli's father's.

Q. Who notified you to go there?

A. Why, Mr. Mickalson came down and told me—the **[225]** postmaster there at Sweet Home—came by my place on horseback, and told me there was some kind of an official up there, and they wanted us to go up, and I got on my horse and went up with him.

Q. Who was there when you arrived?

A. Oh, I don't remember. There was eight or ten people there. I think Mr. Parker was there, W. Billings, the Mealey boys and John Thompson, Sam Pickens and myself. That is all I remember. I think there was a few more there.

Q. Did you have any conversation with either of the Mr. Mealeys before signing the affidavit or instrument that you did sign? A. No, sir.

(Testimony of William J. Lawrence.)

Q. Who was in the room where you went in to sign it?

A. Well, there was a couple of men and a lady.

Q. Did they ask you questions?

A. Yes, sir.

Q. And you gave your answers?

A. Yes, sir.

Q. Was there any writing done upon the instrument with ink at the time?

A. You mean the statement or affidavit?

Q. Yes. A. Not that I know of.

Q. Did you read it over after it was taken out of the typewriting machine?

A. I believe I did. I don't remember for sure whether I did or not. It seems to me like they showed it to me.

Q. Did you sign it right up? How long did you stay there after it was completed and pulled out of the machine?

A. Oh, I think about half *a* hour, maybe.

Q. Did you stay in the room there?

A. No. **[226]**

Q. Did you go right out of the room?

A. Oh, not right away. I was probably in the room five minutes maybe.

Q. Did you know the name of the Government agent that was there? A. No, sir.

Q. Was he an old man? A. Yes, sir.

Q. How about the other man that was there—was he older or younger?

A. Younger, I think. I am not positive. I think one old man and one middle-aged man, I think. It

(Testimony of William J. Lawrence.)

might have been a young man.

Q. And the elderly gentleman, did he write anything in the instrument before you signed it, while you were there? A. Not that I know of.

Q. Would you have noticed it if he had?

A. It looks like I would.

Cross-examination.

(Questions by Mr. LIND.)

Do you remember what occurred at Roseburg the second time you were there, at the time you made the final proof? Do you remember the details of what was done?

A. All I remember is going and making my proof, and going across the street to that other building.

Q. And signing some papers at the other building?

A. I signed some papers in there, yes, but I don't know what they was.

Q. Well, now, did you know at the time?

A. Did I know at the time? **[227]**

Q. Yes, at the time you signed the paper, did you know what it was you signed? A. No.

Q. What did you think it was?

A. Well, I didn't know. I thought maybe it was something in connection with making the proof. I didn't know.

Q. When did you first find out that you had signed the mortgage?

A. Well, Andy Nichols told me something about it a year ago, and I never knew it for a fact until I seen it the other day.

Q. Well, as a matter of fact, didn't you know at

(Testimony of William J. Lawrence.)

the time that you had signed a mortgage, but after its return, you forgot all about it?

A. Well, I cannot remember anything about it.

Q. Did you know what the Government price of your quarter section was? A. No.

Q. How? A. No, I didn't know.

Q. Didn't you know how much money it would take to prove up on a claim? A. No.

Q. Didn't you hear anybody say? A. No.

Q. Did you inquire of anybody? A. No.

Q. Do you know now?

A. Why, since I have been in court here, I heard them say $400, but I don't know.

Q. Well, do you know any more about it than you did then? A. Well, no, I don't. [228]

Q. Well, didn't you know just as much about it then as you do now? A. (Witness laughs.)

Q. Now, really, this is a serious matter. Didn't you know that it took about $400 besides expenses, to prove up on a piece of land at that time, under the Timber and Stone Act? A. Didn't I know it?

Q. Yes.

A. Why, I knew it would cost something but I didn't know what it was.

Q. Well, where did you figure that something was coming from, if not from your mortgage or deed?

A. Well, I supposed it would be furnished.

Q. Furnished by whom?

A. I don't know.

Q. Di*d't* you understand that the Mealey boys were raising the money to make those final proofs for the whole bunch of you?

(Testimony of William J. Lawrence.)

A. Well, I didn't know whether it was their money or not, or whose it was.

Q. No, but you understood that they were raising the money for all of you to make final proof with?

A. Oh, certainly, certainly.

Q. And wasn't that why you gave the mortgage?

A. Well, I suppose there wouldn't have been any other way to have gotten it.

Q. No, I don't either. And you knew that at the time, didn't you?

A. Well, I had ought to know it. [229]

Q. Well, didn't you think that was the way at the time? A. I don't remember whether I did or not.

Redirect Examination.

Q. You didn't inquire into any of the details surrounding this transaction at all, did you?

A. No, sir.

Q. You understood that the Mealey boys were taking care of all those matters?

A. They did the rest of them, and I thought they would me, and I didn't ask any questions—I just followed the crowd.

Q. Whom do you refer to as the crowd?

A. Why, the rest of the boys—Mr. Billings, Mr. Pickens—

Q. All the fellows from up there in your part of the country? A. Yes, sir.

Q. That were making proof at that same time?

A. Yes, sir.

Recross-examination.

Q. Now, you have been before Mr. Burns?

(Testimony of William J. Lawrence.)

A. Yes, sir.

Q. The special agent of the Government?

A. Yes.

Q. When the Grand Jury was in session here?

A. I don't know anything about the Grand Jury. I was down here before Burns.

Q. Well, didn't Mr. Burns tell you about the Grand Jury? A. No, sir.

Q. Where did you have your conferences with Mr. Burns?

A. I believe it was in the Portland Hotel.

Q. How?

A. I think it was up in a room in the Portland Hotel. I am not certain.

Q. He had a number of conversations with you, didn't he? [230] A. No, sir, he did not.

Q. How many? A. One.

Q. How long did that last?

A. Well, it lasted till he got tired of cussing.

Q. It lasted till he got tired of cussing?

A. Yes.

Q. What did he cuss for?

A. Because he felt like it, I guess.

Q. Well, did he cuss you? A. Yes, sir.

Q. What did he try to make you do?

A. I don't know as he tried to make me do anything; but because I couldn't answer it, he told me I was a damn liar.

Q. Did you lie to him?

A. Not that I know of. I don't think so.

Q. How long did he keep you here?

A. I think I was in there about fifteen minutes—

(Testimony of William J. Lawrence.)

something like that.

Q. But how long were you kept in the city?

A. I don't remember.

Q. Well, you have an idea—several days or weeks?

A. I don't think it was any longer than a week.

Q. Kept by the United States Deputy Marshal, were you not?

A. Yes, sir. I was subpoenaed down here on a subpoena, I think it was.

Q. Don't you remember that the Grand Jury was in session at that time, grinding out indictments for alleged land frauds? A. Yes, I do, yes.

Q. Well, now, you were considerably frightened then, were you not, by Mr. Burns and others? [231]

A. Yes, sir.

Q. Don't you think you would be a little more frank to-day? A. What is it?

Q. Don't you think you would be a little more open to-day, a little more frank if you had not had to undergo that ordeal before?

A. Why, I suppose I would.

Redirect Examination.

Q. You haven't told anything that wasn't the truth, have you, as you did understand it?

A. You say I haven't told anything?

Q. Yes. I say you haven't told any untruths to-day, have you?

A. Well, I may, but I don't know if I have.

Q. You are trying to tell the truth?

A. Yes, sir.

Q. Nobody has been frightening you around here,

(Testimony of William J. Lawrence.)

since you have been here this week, has there?

A. No. I ain't been scared a bit.

Q. Where did you go when you first landed in Portland here when you came down to see Mr. Burns, or came down to the Grand Jury? Whose house did you go to?

A. Well, I don't know. I had never been in Portland before, and I just went any old place.

Q. Who looked after you?

A. Nobody that I know of.

Q. Didn't the Mealey boys come along with you people at that time?

A. I believe they were here all right.

Q. And didn't they ask you to go and see Fred Kribs? A. Not that I remember of.

Q. What? A. Not that I remember of.

[232]

Q. Well, who was it told you to go up to Kribs' house?

Mr. LIND.—Now, counsel knows just as well as I do, that that is an improper question. I dislike very much to object to the District Attorney's course of procedure, but I must.

Mr. McCOURT.—Well, I might have objected to your questions. They were not entirely proper in this connection, I think. I want to show that if there was any coercion, anywhere, or persuasion, that it was being used on the other side just the same.

COURT.—I do not think it a material inquiry in this case. He has testified in this case as he understands it now. There is no evidence here of what he told Burns or anything of that kind.

(Testimony of William J. Lawrence.)

Q. Notwithstanding Mr. Burns was harsh with you, you didn't tell him anything different from what you have told here to-day?

A. Not that I know of.

Witness excused. **[233]**

[Testimony of Cornelius Tuthill, for the Government.]

CORNELIUS TUTHILL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Tuthill?

A. Live at Salem.

Q. Did you ever live up in Linn County?

A. Yes; I lived there 25 years.

Q. How long? A. Since 1883.

Q. Were you living up there in 1900?

A. Yes. No, I was in Seattle in 1900.

Q. You were in Seattle in 1900? A. Yes.

Q. Were you up there in the Sweet Home country along in May and June of 1900?

A. I ain't been to Sweet Home for, I guess, about 8 years, I guess. I sold out.

Q. Did you take a timber claim up there in that country in 1900?

A. Well, somewheres about that time; about 10 years ago, pretty near.

Q. Tell the Court now how it was you came to take that timber claim. A. What say?

(Testimony of Cornelius Tuthill.)

Q. Tell us how you came to take that timber claim.

A. Well, as far as I know, I was interested in the matter when Judd Mealey come to me, wanted to know if I would take a claim. I supposed it was all right, and I said yes. He offered to furnish me the money for a certain length of time, and he said they would pay all expenses **[234]** to advertise it, and to prove up; that is, to pay my expenses to Roseburg and back. But I didn't understand it exactly, and I remember about going from Lebanon—I mean from Albany, to Roseburg, to file on it, and then that —I guess it was 60 days, wasn't it, after that, you prove up; then I went up the second time with them from Sweet Home. There were two loads of men. I don't know who they was—I forget now—but I got a statement here that I gave Mr. Heney quite awhile ago, and it speaks all about it. Well, then, when I went to Roseburg, I stood on the floor, I supposed, all right as a witness, that I should have it for my own benefit, and I supposed it was all right. And after we got through, they took me into a room by myself. And I didn't know—I wanted to look at the papers—I think I signed two papers, and I didn't see them at all. They wouldn't let me look at them at all. I signed the papers and went out.

Q. Did they give you anything when you got in that room? A. Beg pardon?

Q. Did you get any money?

A. No, I didn't. Yes, I didn't have the money myself, only what the boys gave me.

Q. What did they give you?

(Testimony of Cornelius Tuthill.)

A. All I got was $50 out of it, but I didn't understand the $50 at all. I supposed I was to get a deed for the land, and I would give them a mortgage. That is what I supposed I was to get, but I didn't get either. And all they give me was $50. I swore on the floor it was for my own benefit, that I was to have the use of that land till I could sell it any time, and pay the mortgage off. That is what I understand. **[235]**

Q. And they took it right away from you?

A. Yes. I signed the papers, and I tell you I didn't know the man at all, I guess; he is a great big-headed fellow, and kind of short, thick—thick-set.

Q. Have you ever seen him since?

A. No, never seen him since.

Q. What?

A. I have never seen him since. And I never saw the papers; never saw the deed, nor nothing else.

Q. Did he have some whiskers down here just a little ways? A. I think so, yes.

Q. Have a moustache?

A. Yes, I think he did. Well. he had a great big head on him,—bigger than three of mine, I guess.

Q. Had you been living up there at Sweet Home at that time?

A. Yes, sir. Yes, I was up at Sweet Home. I ought to have seen the papers before I signed them. That is where I fooled myself, I suppose. That was when I proved up, and give it all away.

Q. Who paid all your expenses and all the money that it took? A. They paid the expenses.

Q. Who were "they"?

(Testimony of Cornelius Tuthill.)

A. Well, Judd Mealey, I suppose, and Bill Mealey, both of them.

Q. Did you ever go to see any of the land?

A. Yes. They took me on the land. It was up near Bull Mountain, I think, above Sweet Home. I see the land.

Q. Now, how long was that after you had proven up that you went into this room there—this little room?

A. After I had—before I took the land?

Q. No, after you had made your proof there, when you swore **[236]** before the officer, how long was it before you went out and signed that deed and mortgage, or those two papers?

A. Well, it might have been 60 days, the time allotted, you know, you have to advertise.

Q. You don't understand me.

A. *It first for 30 days,* don't you?

Q. Yes. You don't understand me. I say, how long was it after you were in the Land Office down there, the last time you were there, before you went out and signed these two papers?

A. Oh, it wasn't long—just long enough to stand up in a row, and tell them it was for our own benefit. We had to swear that in first, and then they took each one apart.

Q. Now, how long after that was it you went out in the little room?

A. Oh, a little while; just maybe 20 minutes; it might be 20—a short time.

Q. Was either of the Mealey boys in this room?

A. One of them I saw. I believe Judd took me

(Testimony of Cornelius Tuthill.)

in where that man was—Judd Mealey.

Q. You are sure you signed two papers there that time?

A. I think there is two, if not three; but I know I signed my name two or three times—three times. They said it was all right, that they could catch the train and get out—"We have got to get back as quick as we can,"—and, of course, he says, "It is all right. You needn't be afraid at all. The paper is all right." But I never saw them only what I signed—never saw the paper afterward.

Q. Well, now, do you remember about a year later after you **[237]** signed that paper, having to sign some other paper about it up there at Wodtli's house?

A. Where is that?

Q. Up at Wodtli's house.

A. I guess so. No, I don't think I signed any only at Roseburg.

Q. Well, do you remember the crowd going up to Wodtli's—up to Hans Wodtli's?

A. Oh, yes, I remember that. Yes, I remember that.

Q. Let us hear about that now.

A. I am glad you spoke about that.

Q. Yes. Well, how did that happen?

A. Well, they brought us down there, and they had a big sheet of paper before them, and us boys looked at it, and they wanted us to tell what to say, and, of course—

Q. Well, what did they tell you to say?

A. Well, we went over to this here Wodtli's, and there was a couple of lawyers, I suppose there was,

(Testimony of Cornelius Tuthill.)

from Washington, and one of them personally spoke pretty lively; and I believe—yes, Judd sat right by me, and says, "If you don't think of all of it, just let me know, and I will tell you." That is the way it was, and they signed the paper.

Q. Did you answer any of the questions yourself?

A. Yes, I answered all I could—about all I could remember. I forget the questions now. It has been so long ago. **[238]**

Q. How long did you stay there at Wodtli's?

A. Well, I believe we went down in the afternoon. We talked the matter over, and I think it was in the morning—think we took one meal; it might have been in the afternoon. Might have been supper; had a pretty good meal; they paid for our supper, 25 cents. Give me $5.00 and I guess give the rest $5.00 apiece. I saw a few get the $5.00.

Q. Which ones did you see get any $5.00?

A. Well, I think it was Sam Pickens, and one of the Wiley boys. I seen three or four. I didn't notice any par*y*icular ones; we was all going to get $5.00. Got a pretty good dinner first, or supper, anyhow.

Q. And gave you $5.00 besides, and answered the questions for you? A. Yes.

Mr. LIND.—I couldn't hear the witness very distinctly, but I heard nothing indicating such an answer as you suggested.

Mr. McCOURT.—He answered that a few minutes ago.

Mr. LIND.—What did he say?

Mr. McCOURT.—He said Judd Mealey sat beside

(Testimony of Cornelius Tuthill.)

him, and said when you don't understand, I will answer for you, something of that kind.

Q. Now, before—did I understand you that Mealey, Judd Mealey, come to see you about the claim, or you went to him?

A. He come to me, and offered to loan me the money.

Q. Did he make—what statement did he make, if any, regarding the sale of the land?

A. No, I never offered—made any bargain at all. I supposed I was to get the claim myself.

Q. You did?

A. Yes, I supposed it was mine. [239]

Q. Do you remember—do you remember being down here in 1904? A. Beg pardon?

Q. Do you remember being down here in 1904, at the Grand Jury?

A. I think it was at the time. It has been quite a while.

Q. Or 1905. And do you remember making a statement before Mr. Burns?

A. Yes, I remember a statement I made here. I made a statement at Portland here.

Q. How?

A. I made a statement here at Portland before Burns, the first time I come down here.

Q. You saw Mr. Burns? How many times were you down?

A. Well, this makes the third time I have been down here. I made a statement here for—

Q. Well, now, I will ask you if that is your signature, Mr. Tuthill?

(Testimony of Cornelius Tuthill.)

A. Yes, that is my signature.

Q. I will ask you if you remember telling Mr. Burns this? A. Yes.

Q. "I reside about ten miles southwest of Albany in Linn County, Oregon." I will state the date of this affidavit is the 10th of January, 1905. And you further said, "In the early part of 1900, I was approached by W. J. Mealey who wanted me to take a timber claim"? A. Yes.

Q. "And said he would pay all expenses and furnish the money, and give me $50.00."

A. Yes.

Q. Do you remember telling Mr. Burns that?

A. I remember that, but I didn't understand the $50.00 I **[240]** spoke about.

Q. What?

A. I remember stating $50.00, but I didn't understand what it meant. I supposed I was going to get the claim anyhow; I supposed I was—pay $50.00 for the mortgage.

Q. You thought you would get the claim and $50.00?

A. Yes, I was to pay him—I didn't understand it. Supposed I was to get it for the claim, and give my mortgage—that I would pay—that is I understood—

Q. Oh, you did understand that he said you were going to get $50.00? A. Certainly.

Q. Oh, he did say, then? A. Yes, sir.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Tuthill, did you say that Judd Mealey an-

(Testimony of Cornelius Tuthill.)

swered some questions for you at Wodtli's?

A. Beg pardon?

Q. Did you say that Mr. Mealey answered some questions for you at Wodtli's?

A. No, no, I don't think he asked any questions.

Q. How? A. I don't understand you.

Q. Didn't you say to the District Attorney that Judd Mealey answered some questions for you at Wodtli's house?

A. No, I don't think he did. No, I don't remember his asking any questions.

Q. It would take him a good while to answer questions for anybody—wouldn't it?

A. I don't remember it.

Q. Did anybody answer any questions for you when you were talking, and when that young woman was writing? A. Ask any questions? **[241]**

Q. Did anybody answer any questions for you?

A. Oh, I don't remember. I remember the questions, but I don't remember what now. I don't understand you exactly. I am a little hard—better come closer so I don't make no mistake. I want to be understood. I want to be understood—so I can hear you.

Q. Yes. You remember going to Wodtli's house?

A. Yes, sir.

Q. What did you do there? A. Wodtli's?

Q. At Wodtli's.

A. Well, we went before these two men; there was one man questioned us, and another lady at a typewriter and put it all down.

Q. Just like the stenographer sitting here?

(Testimony of Cornelius Tuthill.)

A. Yes, she—

Q. Who answered the questions?

A. Well, I don't know; I don't know his name. There was two men, but I don't know the man's name.

Q. Well, he asked you the questions, didn't he?

A. Yes.

Q. Did you answer them? A. Yes.

Q. Did anybody else answer for you?

A. No, only once or twice; Mealey told me what to say once in a while, if I might forget, he would tell me what to say.

Q. But he told you right, didn't he?

A. No, no—well, pretty near. I could not tell about it.

Q. Do you remember anything that he told you about?

A. No, I don't remember it now.

Q. He told you the description of the land, probably?

A. Oh, told the description of the land, when I went to look at it, at Bull Mountain. That is all I know. He took **[242]** me up to the claim, and told me about it—all I know about it.

Q. What did you go up to that claim for?

A. To locate—he said he would locate me, and wanted me to go look at it.

Q. What did you want to locate it for?

A. What?

Q. What did you want to locate it for?

A. I could not locate myself. I wanted, if I could make anything to help, for my own benefit. If I

(Testimony of Cornelius Tuthill.)

could make a thousand or fifteen hundred, might as well have it as not. There was to be a mortgage. I supposed I was—

Q. He told you about a mortgage, or deed, did he?

A. I was to give him a mortgage, I understood.

Q. For the money that it would take. You knew it would take money to pay Uncle Sam?

A. Of course, $450.00. I supposed I was going to get the money and take up the land, and give him a mortgage. I would get a deed.

Q. You would get a patent?

A. A patent. I was to have it, I supposed, six years. I understood six years I was to have the land. I was to pay that mortgage off in that time, even before six years if I wanted. That is what I understood.

Q. When did you find out differently?

A. I found out differently after I filed—on these papers, and found of the others what I had done. That is all. Got it from others—I never saw the papers.

Q. Didn't you sign—you signed a deed for this land?

A. I signed two papers, I supposed at the time I proved up. I thought—the papers I never saw.

Q. How old a man are you? **[243]**

A. In my 68th year.

Q. Are you hard of hearing?

A. A little in one ear; yes, sir.

Q. Forgetful? A. Beg pardon?

Q. Have you become forgetful?

A. Yes, sir, forgetful, some things, yes.

(Testimony of Cornelius Tuthill.)

Q. Pretty hard for you to remember business transactions, eight or ten years ago?

A. Yes, it is. I am in my 68th year now.

Q. 68th. It is pretty hard to remember—

A. Yes, it is.

Q. —what Burns and Heney told you?

A. Yes, it is now, so long a time.

Q. You were pretty badly frightened, were you not?

A. I tell you all I can and be honest as far as I can. That is all I know about it.

Q. Do you remember whether the Mealey's told you how much money it would take to prove up and pay the expenses?

A. Why, it was his house, I believe.

Q. How?

A. It was his house. He told me up where he lived.

Q. But how much—did he tell you how much it would take?

A. Well, I know—he didn't exactly tell. Said it would take $450.00—$2.50 an acre to prove up on it, and then he would pay the expenses back and forth to Roseburg.

Q. How much did he figure his expenses would be?

A. Well, it would have been $25.00 he paid out besides the $50.00.

Q. $125.00?

A. Well, I got $50.00; I suppose his expenses for me was $25.00.

Q. But did he say anything about the expenses

(Testimony of Cornelius Tuthill.)

for [244] locating you?

A. No, no, not exactly. I don't remember. No, didn't say nothing about expenses at all. Not to me, he didn't.

Q. How?

A. He didn't say anything to me about paying expenses.

Q. Do you remember now whether he told you how much money he would lend you or get for you?

A. Well, there was not—to take up the land. $2.50 an acre, isn't it?

Q. How? A. $2.50 an acre, isn't it?

Redirect Examination.

Q. Before you talked to Mr. Burns had you received any communication from Mr. Mealey?

A. Well, I did. I was out on the place. I did. The other side of Jefferson. He sent me a letter.

Q. Do you know his handwriting? Know it was from him? A. Yes, I knew his handwriting.

Q. I hand you a letter and ask you if that is the letter you mean?

A. Yes, that is his writing, yes.

Mr. McCOURT.—I offer the letter.

Mr. LIND.—This is objected to as immaterial and irrelavant, and certainly incompetent at this time or in this connection.

Mr. McCOURT.—I offer the letter for the purpose of showing the effort made by the defendants, especially the defendants Mealey, to influence, or rather to frighten the witness out of telling the truth.

Mr. LIND.—What is the date of the letter?

Mr. McCOURT.—The date of the letter is Decem-

(Testimony of Cornelius Tuthill.)

ber 20, 1904. **[245]**

Mr. LIND.—That, your Honor, is long after the patents were issued and evidently written at the time there were some proceedings here in Portland. Now, it is purely immaterial and irrelevant. You can't impeach this witness or clarify any of his testimony by it. If you choose to use other witnesses—if the Mealeys were on the stand and testified inconsistent with that, it would be proper on cross-examination. At this time it is surely irrelevant.

Mr. McCOURT.—I withdraw the letter and have it marked for identification.

Marked "Government's Exhibit 26 for Identification."

Q. I offer a copy of the deed dated the 9th day of October, 1900, covering the land embraced in his entry. Deed from Cornelius M. Tuthill to F. A. Kribs.

Marked "Government's Exhibit 27."

COURT.—No mortgage with this?

Mr. McCOURT.—Apparently not. There was none of record so I don't know whether there was one or not.

Q. Were you a married man at that time?

A. Married—no.

Q. What other property did you own at the time you made the filing?

Objected to as immaterial.

Mr. McCOURT.—I ask the privilege of asking it as redirect.

COURT.—What is the purpose? To show he had no money?

(Testimony of J. A. Steingrandt.)

Mr. McCOURT.—I don't know but what he has said so already.

Witness excused. **[246]**

[Testimony of J. A. Steingrandt, for the Government.]

J. A. STEINGRANDT, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Steingrandt?

A. Eight miles east of Foster.

Q. Do you know William R. and Judd Mealey?

A. Yes, sir.

Q. How long have you known them?

A. For the last 25 years.

Q. And Mr. John A. Thompson?

A. Yes, sir.

Q. Do you know Frederick A. Kribs?

A. No, sir.

Q. Never met Mr. Kribs?

A. No, sir. If I have I never knew him.

Q. You took a timber claim up there in Linn County, and one of the claims involved in this litigation. Will you kindly state to the Court the circumstances leading up to the taking of it, the conversations you had regarding it and follow it right along in successive steps.

A. Why, I don't know as I can remember all of it.

Q. No, we don't expect you to.

A. Why, I took up a timber claim there, I can't

(Testimony of J. A. Steingrandt.)

remember just the time that it was, and I had heard of other people taking up timber claims. I come to the conclusion that I would take up one myself. I went to the Mealey brothers and spoke to them about it, to see if they could locate me, and they said they would see later on, the timber was pretty well taken up at that time. I think it must have been about a week, I guess, before I heard from them. **[247]** They told me they had found a claim that I could take up, and I think it must have been about five or six days, I guess maybe longer, afterwards, when we went up to see the claim. They took me over the land and showed me the corners, showed me the timber, and I should judge it was about ten days before we went down—before I went down to file on it.

Q. Who was in the party when you went up to look at the timber? A. How is that?

Q. Who was there in the party when you went up to look at the timber?

A. Why, the two Mealey brothers, and Samuel E. Pickens, George Pickens, Thom Parker, Joe Mickalson, Charles Wiley and Oliver Erickson, Frank Steingrandt, as near as I can remember.

Q. How far was that from where you lived at that time to the timber?

A. I judge about seven miles.

Q. How long had the Mealey boys been engaged in filing persons on timber claims at the time you applied to be located?

A. Oh, I could not tell you just how long. It was quite a while.

(Testimony of J. A. Steingrandt.)

Q. What do you mean by "quite a while"? How many months?

A. Oh, five or six months, maybe, might have been a year.

Q. How did you get up to this timber claim, walk or ride? A. Yes, I walked up.

Q. All of the party walk up?

A. Yes, sir. **[248]**

Q. And how far was it from Mealey's house?

A. About seven miles, I think.

Q. Well, now, when you went to Roseburg, did the entire party go to Roseburg? A. Yes, sir.

Q. When you got down—who paid your expenses to Roseburg the first time?

A. I don't know who paid my expenses.

Q. Did you pay it? A. No, sir.

Q. Do you know who paid for advertising the notice of your final proof? A. No, sir.

Q. Well, what did you do next about that claim, after you returned from Roseburg? Who called your attention to it again? A. Me taking it?

Q. No, who called your attention to making proof? Who told you it was time to go and make proof?

A. Why, it was advertised in the Brownsville paper.

Q. Did you take the paper at that time?

A. Well, I did at the time, yes.

Q. Well, did you go down alone when you went down to prove up? A. No, sir.

Q. Who went along?

A. Why, I could not just remember who all.

(Testimony of J. A. Steingrandt.)

Q. All those same people?

A. I think all the same people that was with me up there, I think was along.

Q. How did you go from the Foster country there down to the railroad? **[249]**

A. Why, we came down—I forget now whether the Mealey brothers drove their own team or a special team hired from Sweet Home. I don't remember. Come down to Sweet Home.

Q. Did you go around and engage passage with them or did they come and tell you when to be ready to go?

A. Why, the date was in the paper, when it was time to prove up and that date stated that, when to start, so we would get there on time.

Q. How did you find out the Mealey's rig was going? A. How? What? How is that?

Q. When did you find out the Mealey's rig was going and that you were to go in it?

A. They sent word to me and told me they were ready.

Q. And where did you take the train?

A. Lebanon.

Q. Well, when you got down to Roseburg, what occurred?

A. Why, we went to breakfast when we got down. We got in at twenty minutes to five.

Q. In the morning? A. In the morning.

Q. What occurred later in the day, in relation to this claim?

A. I think we went to the Land Office.

Q. Who went to the Land Office?

(Testimony of J. A. Steingrandt.)

A. All of us that was connected in the gang.

Q. Was either of the Mealey boys along?

A. Yes, sir.

Q. How many of them?

A. I think there was one of them, or both of them. I don't remember which.

Q. Was John A. Thompson there? **[250]**

A. No, I don't think he was.

Q. You don't think he was there. Did they go up to the land office with you? A. Yes.

Q. Well, what occurred when you got into the land office?

A. Why, we made final proof, there, before the land agent.

Q. Well, did you have any conversation with the Mealey boys prior to going in there to make proof?

A. No, sir.

Q. As to what you should swear to?

A. No, sir.

Q. You didn't. Or at any other time?

A. No, sir.

Q. Well, when you had made your final proof, what did you do?

A. Why, I think I went to the hotel, as near as I can remember.

Q. What occurred there?

A. I think it was a hotel where we went. I would not say for sure.

Q. Well, what occurred there, wherever it was you went to?

A. Why, we signed—I signed the mortgage for the security of the land.

(Testimony of J. A. Steingrandt.)

Q. How much of a mortgage did you sign?

A. I could not tell you that. I don't know.

Q. How much money did you get?

A. I didn't get any.

Q. And was your wife up there?

A. How is that?

Q. Was your wife up there? A. No, sir.

Q. Were you married then? A. Yes, sir.

Q. Who was present when you signed the mortgage?

A. Why, I think there was two persons there present. **[251]**

Q. Who were they?

A. I think one of the Mealey brothers was one and another man there. I don't remember who he was.

Q. Do you know a man by the name of John Shupe? A. No, sir.

Q. Don't know Mr. Shupe? Do you know who you made the mortgage to? A. No, sir.

Q. How long after you made the mortgage was it before you made the deed?

A. Why, I didn't see the deed for about a couple of weeks, I guess, or more.

Q. Who brought it to you?

A. A man by the name of Buck, and William R. Mealey.

Q. Did you go right home from—

A. Yes, sir.

Q. All the party go right home?

A. Yes, sir.

Q. Well, when you got—when you made the deed,

(Testimony of J. A. Steingrandt.)

what occurred?

A. Why, nothing that I know of.

Q. Well, did you get any money?

A. Yes, sir.

Q. How much?

A. We got $50.00 at present. I got $75.00 afterwards.

Q. When did you get the $75.00?

A. About three or four months after, I think. I got about $125.00 altogether.

Q. How was that $75.00 paid?

A. How is that?

Q. How was that $75.00 paid to you?

A. In gold.

Q. Who paid it to you? A. Mr. Mealey.

Q. And where did he pay it to you?

A. At home. **[252]**

Q. How did he pay you the $50.00—what kind of money? A. In gold coin.

Q. Who was present? A. Mr. Buck.

Q. Who was present when he paid you the $75.00?

A. Nobody.

Q. Which Mealey paid it to you?

A. Mr. William Mealey.

Q. Where, whose house? A. Mine.

Q. Was your wife present? A. Yes, sir.

Q. Do you remember the day of the week that was? A. No, sir, I don't.

Q. Do you rememmber being down here in 1905?

A. Well, I was down here once. I don't remember what time it was.

Q. Yes. Did you tell anybody at that time that

(Testimony of J. A. Steingrandt.)

you received any $75.00 after you got the $50.00?

A. No, sir.

Q. Didn't you tell them that you only got $50.00?

A. Yes, sir.

Q. Didn't you talk to Mr. Rabb here last Fall—last March—about a month ago, anout this same thing? A. Who?

Q. About a year ago?

A. No, sir, I don't know.

Q. Out there by Foster, this gentleman here?

A. I don't remember of ever meeting the gentleman.

Q. Talking to him out on the road there, near your place?

A. No, sir, I don't. If I ever saw him I don't remember him.

Q. Don't you remember talking to a Government agent about **[253]** a year ago, about this case?

A. No, sir, I don't remember him.

Q. You don't. You were driving in a buggy, or wagon, and you had somebody driving with you—Mr. Rabb had a driver?

A. No, sir, I don't remember.

Q. You don't? A. No, sir.

Q. In which you stated to him that you made your filing with the understanding that you would receive $50.00 for your right and that you had no other understanding or agreement, and that $50.00 was what you were paid?

A. If I did I don't remember it.

Q. You don't? A. No, sir, I do not.

Q. Well, how does it come, now, that you didn't

(Testimony of [illegible] Steingrandt.)

say anything about the $75.00 to Mr. Burns and you didn't say anything about the $75.00 to Mr. Rabb?

A. Why, I didn't think that was any—

Mr. UELAND.—We object to that question.

Mr. McCOURT.—Wait until I finish that question.

Q. And for the first time you now talk about $75.00 that you received after the $50.00.

Mr. UELAND.—We object to that question because it assumes facts that do not appear in evidence. There is no disclosure in the evidence that this is the first time that he has stated so and so. The question assumes a state of facts that is not present.

COURT.—He just answered he never said it at any other time, if I understand his testimony. He said he never made that statement before. **[254]**

Mr. UELAND.—I didn't so understand.

Mr. McCOURT.—Read that question to the witness.

(Question read as follows: Well, how does it come, now, that you didn't say anything about the $75.00 to Mr. Burns and you didn't say anything about the $75.00 to Mr. Rabb, and for the first time you now talk about $75.00 that you received after the $50.00?)

A. I didn't think it any importance to anybody else about what I got.

Q. You didn't? A. No, sir.

Q. You were asked particularly about that very thing, weren't you? A. Yes.

Q. You remember talking to that man (indicating Mr. Good), just two or three days ago, about that same matter? A. Yes, sir.

(Testimony of J. A. Steingrandt.)

Q. And he asked you about that matter of the payment? A. Yes, sir.

Q. And you never said a thing to him about any $75.00?

A. (Addressing Mr. Good.) You asked me if I got $50.00, didn't you, or something that way, how much money I got. What was it I told you?

Mr. GOOD.—Fifty dollars, if I remember.

A. Well, I didn't think it was any use for me to tell him how much more I got afterward. I don't know what I got it for.

Q. Now, when you went to talk about this claim to Mr. Mealey how much did he tell you?

A. That I was to get?

Q. Yes. A. Fifty dollars. [255]

Mr. UELAND.—Just wait a minute. I want the counsel to fix that time.

Q. That was before you filed on the claim at all?

A. How is that?

Q. That was before you filed on the claim at all?

A. No, sir.

Q. When was that? A. Afterwards.

Q. Do you remember in this statement that you made before Mr. Burns, on January 13, 1905, you and Louis Maynard and Joseph W. Rozell being present, making a joint statement that you "heard that the Mealey boys were locating men on timber claims and paying $50.00 apiece. We called on the Mealey's and asked if we could get in on the deal. They informed us we could. We made our filings at Roseburg office and when time came to make final proof we again went to Roseburg and proved up, but

(Testimony of J. A. Steingrandt.)

didn't pay any of the final proof money, being told by the Mealey's that it was all attended to. After making final proof we, Louis Maynard and J. H. Steingrandt"—well, that is Steingrandt—oh, you are Steingrandt—"mortgaged the land to Fred A. Kribs or through his agents, so far as we recollect. A short time afterward we signed deeds transferring the land to Kribs or his agent, and after signing these deeds were paid $50.00 each for our part in the transaction."

A. Well, he never asked me such questions.

Q. Didn't you tell Mr. Burns— A. No, sir.

Q. —in the presence of these gentlemen that Mr. Mealey—or that you took the claim with the understanding that Mr. Mealey was to get the claim and you was to get $50.00? A. No, sir. **[256]**

Q. You didn't? A. No, sir.

Q. Do you remember about a year after you had deeded this land being at Wodtli's house there?

A. Yes, sir.

Q. Who requested you to appear there?

A. I was notified by Mr. Thompson to go down. Said they wanted to see me. A man wanted to see me. I didn't know what he wanted to see me for.

Q. What happened when you got there?

A. He had some *papers wanted* me to sign.

Q. Were they already made out?

A. Well, no, they were typewritten while I was there.

Q. Who was in the place when you got inside?

A. Why, there was two men there and a lady running the type.

(Testimony of J. A. Steingrandt.)

Q. How long had you been outside there before you went in?

A. I went right straight from Foster down there. Didn't have only just a minute or two to stop there, because the stage was pretty near there and he had to take the stage to get out.

Q. Did you have a talk with William Mealey before you went in to answer those questions?

A. No, sir.

Q. You didn't? Did you know at that time to whom you had deeded your land?

A. No, sir, I didn't.

Q. Nor to whom you had mortgaged it?

A. No, sir, I didn't.

Q. Did you know how much you had mortgaged it for? A. No, sir, I didn't. **[257]**

Q. Did you know how much you had sold it for?

A. No, sir.

Q. Did you get your $75.00 after you made your affidavit down there?

A. I could not remember if I did or not.

Q. Wasn't that $75.00 you were talking about the consideration you got for taking a homestead?

A. For taking a homestead?

Q. Yes. Which was also deeded to the Mealey brothers?

A. It might have been, but I don't remember.

Q. You did take a homestead?

A. Yes, sir, I did.

Q. And you did deed it to them?

A. No, sir, I didn't.

Q. Or to somebody in their interest?

(Testimony of J. A. Steingrandt.)

A. I sold them part of it. Yes, sir, I sold them part of it.

Q. What did you get for that?

A. $3.50 per acre.

Q. And how many acres did you sell them?

A. Eighty acres.

Q. Did you get it all at once? A. Yes, sir.

Q. Well, then, the $75.00 you were talking about could not be part of that, could it?

A. I sold them, I think, forty acres or more afterward, all but my improvements, and I don't remember that I got all of this or not. I don't think I did.

Q. What is your best recollection, now, about this $75.00 business, whether or not it was a part of your homestead purchase price, instead of this?

A. It might have been, but I don't remember. Might have been, but I don't remember. **[258]**

Q. Well, when you got down there to Wodtli's, do you remember being asked this question: "How much, if anything, did you pay him for his service in locating you?" Wait, I will ask you the question immediately before that.

"Q. Who, if anyone, located you on this land or showed it to you? A. Mr. William Mealey. Q. How much, if anything, did you pay him for his service? A. $50.00."

A. I don't remember what his location fee was.

Q. Did you pay him any location fee?

A. Yes, sir.

Q. You did? How did you pay it?

A. I don't just remember now.

Q. Did you remember then?

(Testimony of J. A. Steingrandt.)

A. Yes, I think I did. I don't remember now what it was.

Q. Did you ever tell anybody before that there was a location fee, except this man at Wodtli's house? A. No, sir, I don't think I did.

Q. How were you going to pay a location fee of $50.00 if you were only going to get $50.00 for your claim?

A. Well, I don't remember now how that was. There might have been such a thing somebody else pay the location fee, but I don't remember it.

Q. $50.00 was all you was going to get?

A. Yes, sir.

Q. And you were not to be out a cent of money, of any kind, were you? A. No.

Q. Do you remember this question being asked you and answering it: "What did position have you made of the land since you obtained your final certificate? A. Sold it to F. A. Kribs for $840.00."

A. I don't remember it. **[259]**

Q. What is that?

A. I don't remember it.

Q. Did you answer any question that way at that time? A. I don't remember. I—

Q. What?

A. I don't remember if I did. I never received any $440.00.

Q. $840.00? A. $840.00.

Q. "Do you know Mr. Kribs personally? A. I got acquainted with him while I was in Roseburg, at the time I filed on the timber claim."

A. I never knowed Mr. Kribs in my life.

(Testimony of J. A. Steingrandt.)

Q. You didn't?

A. No, sir, just as sure as I am sitting right here.

Q. Question again. "Did you meet Mr. Kribs there then and make the sale with him personally, or did Mr. Thompson arrange the sale for you? A. I seen Mr. Kribs personally. Q. Did you agree on the price which you was to receive and that Mr. Kribs was to have the land? A. Yes, sir."

A. I don't know anything about it.

Q. Well, did you answer that question that way?

A. I don't remember it.

Q. Was Mr. William Mealey in the room while you were?

A. Yes, sir, I think he was. One of the Mealey brothers.

Q. Were they giving you any instructions?

A. No, sir.

Q. As to how you should answer?

A. No, sir.

Q. "Q. Did you borrow any of the money with which you paid the Government for this land? If so, how much and of whom? A. $600.00 of Mr. Kribs."

A. I never borrowed any money of Mr. Kribs.

Q. Or of anybody else? A. No, sir. **[260]**

Q. "How much money was paid you by Mr. Mealey? A. $240.00, being the balance over the $600.00 which was due on the mortgage."

A. I don't know nothing about it.

Q. Did you answer that question that way?

A. No, sir, I don't think I did.

Q. Did you tell that Special Agent you received $240.00?

(Testimony of J. A. Steingrandt.)

A. I don't think I did. If I did I don't remember it.

Q. What is your recollection now as to the amount of money you did receive for the use of your right upon that land? A. Fifty dollars.

Q. Well, do you wish to—do you wish us to understand now that you got $75.00 in addition to that?

A. Well, I don't know whether that was in addition to that or not.

Q. What was the circumstances under which you received any $75.00?

A. Why, the Mealey brothers and I done dealings times before that in different things, and I thought to myself, there might be sich a thing he was helping me out because I was a poor man, that much money, being I hadn't received enough for the claim.

COURT.—What did he say when he gave you the $75.00?

A. He said, "Here is $75.00 I will let you have, if it will do you any good." Never told me what for.

COURT.—You didn't ask him?

A. No, sir.

COURT.—Just took the $75.00?

A. No, sir, I just took the money. If he wanted to give it to me. **[261]**

Q. How near was that to the time at which those affidavits were made? A. I don't remember.

Q. Wasn't it about the time you came down here before the grand jury? A. No, sir.

Q. About four years ago?

A. No, sir, I had my own money to pay my way

(Testimony of J. A. Steingrandt.)

down here that time.

Mr. McCOURT.—I want to put in evidence the mortgage Steingrandt and wife to Fred A. Kribs, dated *Augus* 27, 1900.

Marked "Government's Exhibit 28."

Mr. McCOURT.—I also want to put in evidence the deed of Steingrandt and wife to F. A. Kribs, bearing date the 1st day of September, 1900.

Marked "Government's Exhibit No. 29."

Q. There was a matter I started to refer to, but I didn't have the papers. The other day, up there in the office of the United States Attorney, Mr. Good—W. G. Good and Mr. Bruce Kester being present, and yourself, a few days ago, April 21, do you remember being there at that time?

A. Yes, sir, I do.

Q. And talking with them about this case?

A. Yes, sir, he asked me some questions about it and I answered it.

Q. Don't you remember saying to Mr. Good there at that time, in the presence of Mr. Kester, that you never did any bargaining with any of them after the original talk and never expected to get more than $50.00 out of it?

A. That is right—that is what I did.

Q. And your attention was called to that Burns affidavit there, at the time, was it not? [262]

A. Yes, sir.

Q. And you said that day, as you understood it stated the facts? A. Yes, sir.

Q. Do you recall Louis Maynard and J. W. Rozell being present at the time you made the affidavit be-

(Testimony of J. A. Steingrandt.)

fore Mr. Burns? A. Yes, sir.

Q. And signing it with you? A. Yes, sir.

Q. In the presence of Mr. Burns?

A. Yes, Burns and Heney was both there.

Mr. McCOURT.—I offer the Burns affidavit in connection with the witness' statement.

Mr. LIND.—It is incompetent.

COURT.—It is not competent. He can refresh his memory from it.

Mr. McCOURT.—Very well, I will withdraw the offer.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Steingrandt, how long had you known the Mealeys before you took this claim?

A. Why, I could not tell you just exactly. I have known them for the last twenty-five years, but I don't know just how far back it has been since I took the timber claim.

Q. What was your business at that time?

A. Why, just lived on a farm, on a little ranch up there.

Q. You are living on a farm?

A. Yes, sir, I am living on a farm now.

Q. Are you living on the same farm now? **[263]**

A. No, sir, am living on a piece of road land now I have got leased.

Q. Did you have a family? A. Yes, sir.

Q. You said you went to see Thompson, or William Mealey? A. Yes, sir.

Q. About this matter? A. Yes, sir, I did.

Q. Well, now, who did you go to see?

(Testimony of J. A. Steingrandt.)

A. I think I went to the Mealey brothers, both of them.

Q. Now, I wish you would tell me just what you said to them and what they said to you.

A. Why, I went to them and asked them if they could locate me on a piece of timber claim—timber land, and they said that they could, they thought, but didn't know for sure at present. Timber land was pretty well taken up at that time. Says "If we can find," he says, "a piece of land for you," he says, he says, "Why, we will locate you," and they did.

Q. What else was said? A. How is that?

Q. Was anything else said between you?

A. No, sir.

Q. Now, you stated in answer to the District Attorney that they promised you $50.00?

A. Not at that time.

Q. When did they say anything about the $50.00?

A. That was after I had proved up.

Q. At the time you gave your deed?

A. Yes, sir.

Q. Now, Mr. Steingrandt, didn't you kick on the price, $50.00, didn't you tell Mealey that wasn't enough for that land? A. Yes, sir. **[264]**

Q. Didn't you kick pretty hard, didn't you tell him that you were letting your claim go too cheap?

A. Well, I might have, I don't remember.

Q. Well, isn't that how you come to get that $75.00, not to make any stir about it?

A. How is that?

Q. Isn't that how you come to get that $75.00 later, because you kicked on the price?

(Testimony of J. A. Steingrandt.)

A. Well, it might have been.

Q. Well, isn't it true? Now, we want the truth.

A. No, sir, I don't remember.

Q. Isn't it true that you kicked pretty hard and said that you would make trouble for them out among the neighbors? A. No, sir, I didn't.

Q. That there would be trouble among the neighbors? A. No, sir, I didn't.

Q. Unless they paid you a better price?

A. No, sir, I didn't. No, sir.

Q. Didn't you complain that they got more out of the claim than that, themselves?

A. No, sir.

Q. Did you know how much they got for their work?

A. No, sir, I don't. I never asked them.

Q. Did you think that the Mealey brothers had the money for that mortgage?

A. No, sir, I don't know whether—

Q. Where did you think that money came from, that went to pay for your claim?

A. I could not tell you.

Q. You know you gave a mortgage?

A. Yes, sir, I did.

Q. And what was that mortgage for? **[265]**

A. For to secure the land for the money that was paid on it.

Q. How much was paid to the Government?

A. Why, the Government price, $2.50 per acre.

Q. Did you understand how much that would make? A. No, sir, I didn't think.

(Testimony of J. A. Steingrandt.)

Q. How?

A. I think I did. I think $400.00 is what it cost, about.

Q. And the other expenses? A. Yes.

Q. And the locating fee? A. Yes.

Q. Did you figure on how the $600.00 was made up? A. No, sir, I didn't. I never did figure it.

Q. When did you first hear about the amount of that mortgage? A. How is that?

Q. When did you first learn what the amount of the mortgage would be?

A. Why, I never did learn what the *mortgage.*

Q. You signed it, did you not?

A. Yes, sir.

Q. Didn't you look into it then?

A. No, sir, I didn't.

Q. Who was present when you signed it?

A. Why, I think Mr. Mealey, William Mealey, was present in there.

Q. Who was he in th*eir* with, if you remember?

A. I don't know who he was.

Q. A lawyer—was there a lawyer there?

A. Might have been a lawyer, might have been just a Justice of the Peace. I don't know, I am sure.

Q. A man who did the writing?

A. A man who did the writing, yes.

Q. Did you ask him any questions? [266]

A. No, sir, I did not.

Q. Did he ask you any questions?

A. No, sir, he did not.

Q. What did you think you were doing?

(Testimony of J. A. Steingrandt.)

A. Well, I just thought I was signing some papers that would secure the land. I naturally supposed I was doing right.

Q. What kind of papers?

A. Why, I naturally thought it was a mortgage.

Q. Were you not curious to know how much it was for? A. No, sir.

Q. You expected to pay it some time, if you didn't sell the land, didn't you? A. Yes, sir.

Q. You signed a note too, did you now?

A. I don't remember signing any note.

Q. Did Mealey ask you for a deed at that time?

A. No, sir, he didn't.

Q. Did you expect to give a deed at that time?

A. Well, I naturally supposed maybe I had to some time, when I got it.

Q. When you got what? A. The deed.

Q. You mean when you got title?

A. Yes, when I got title for my land, yes.

Q. Did you ask Mealey how he expected to raise the money on the land? A. No, sir, I didn't.

Q. What did you understand? What is your idea about it?

A. Well, sir, I could not tell you.

Q. Had you made any bargain with anybody about that land before the time you went to Roseburg to make final proof? **[267]**

A. No, sir, I didn't.

Q. Well, had you in your mind, indirectly?

A. No, sir, I never bargained it to anybody or made any agreement with anybody.

Q. Well, did you feel that the land was just the

(Testimony of J. A. Steingrandt.)

same as your land when you proved up?

A. Naturally supposed it was mine until I got my patent for it. The deed, whatever it was.

Q. You mean the regular Receiver's receipt, the duplicate, we call it?

A. Yes, the Receiver's receipt.

Q. Was that usually called duplicate?

A. Yes, the same I got for the homestead. I supposed after I got the duplicate receipt it was mine until I got title for it. My Government patent.

Q. After you got that duplicate, when you had proved up, did you feel that anybody else in the wide world had any interest in that land but you?

A. No, sir.

Redirect Examination.

Q. You knew the duplicate was issued right there while you were proving up?

A. Maybe it was, for all I know.

Q. Did you ever see it at all?

A. No, sir, I never.

Q. When you got the duplicate, what were you going to do with the land? A. What was I?

Q. Yes. A. Sell it, if I got a chance.

Q. What did you think Mealey was going to get for all his trouble?

A. I don't know. [268]

Q. Did you think he was doing it just for glory, to be good to the neighbors up there?

A. He might have got four bits for it or he might have got a thousand fot it.

Q. What did you think he was going to get if you kept the land?

(Testimony of J. A. Steingrandt.)

A. I could not tell you if I kept the land, *except would* have to raise the money to redeem the mortgage with and I could not do that.

Q. You never expected to redeem the mortgage, did you? A. No, sir.

Q. You understood that that mortgage was put there just as a kind of step in the transaction, didn't you? A. Might have been.

Q. You never expected to pay it—pay any mortgage? A. No, sir.

Q. At any time. Now, isn't it a fact, Mr. Steingrandt, that before you ever went to Mealey's at all that you understood that you could take up a claim under their direction and get *$50.0* for doing so, upon turning the land over to them?

A. I believe that is right.

Q. Isn't that why you went to see them?

A. Yes, sir.

Q. Wasn't that why you went ahead and took up the entry? A. Yes, sir.

Q. Did you ever expect to get any more than $50.00 out of that claim? A. No, sir.

Q. And that is exactly what you got?

A. Yes, sir.

Q. Did you have that expectation before you filed? A. Yes, sir. **[269]**

Q. And isn't it a fact you understood the land was to go to Mealey or to whoever they directed?

A. Didn't have no understanding who the land should go to.

Q. You understood that, when you went to see them? That is what occurred?

(Testimony of J. A. Steingrandt.)

A. Something like that.

Mr. LIND.—Something like what?

Q. What did you understand they were working for?

A. I don't know. I didn't understand what they were working for.

Q. What did you understand they were trying to do? A. I cannot tell you.

Q. Was—didn't you understand they were after the lands for themselves or somebody else?

A. Yes, I understood they were taking up lands, but who they were taking it up for—naturally I supposed *that were* taking for themselves. Didn't know who they were dealing with.

Q. You understood that you were going to turn the land to whoever that was they were dealing with?

A. Yes.

Q. Certainly. That is all.

Recross-examination.

Q. I will ask you one more question, Mr. Steingrandt. Is this what you mean? Now, note what I say. When you went to Mealey's and asked them to file you on a claim, did you mean you wanted the profit therefrom, or the value of it? If you got $50.00, well, and if you could get more than $50.00, well and good. If not, you would be content [270] to sell the land, when you got it, for $50.00?

A. Yes, sir.

Q. That is the way you felt? A. Yes, sir.

Q. Now, when you were down here and had this talk with Mr. Burns, did Mr. Burns threaten to send you to the penitentiary?

(Testimony of J. A. Steingrandt.)

A. He told me and told Mr. Rozell that he would indict everyone of us if we didn't sign the papers and tell the truth.

Q. Have you been told substantially the same thing since you came here as a witness?

A. How is that?

Q. Have you been told the same thing again since you came here as a witness?

A. No, sir; no, sir.

Redirect Examination.

Q. You told Mr. Burns the truth, didn't you? You told Mr. Burns the truth, didn't you?

A. Why, I guess I did; I thought I did, anyhow.

Witness excused. **[271]**

[Testimony of Richard F. Malone, for the Government.]

RICHARD F. MALONE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live? A. Sweet Home.

Q. How long have you lived there?

A. Born and raised there.

Q. How is that? A. Born and raised there.

Q. Were you—you were living there in 1900?

A. Yes, sir.

Q. Know William R. Mealey how long?

A. Ever since I was a boy, I guess.

Q. And Judd Mealey? A. Yes, sir.

(Testimony of Richard F. Malone.)

Q. How long have you known John A. Thompson?

A. I guess ever *since have* been a boy.

Q. You were up there in 1900. I think you said that already. Do you know Fred A. Kribs?

A. Well, I do now.

Q. Do you recall Mr. Kribs coming into that part of the country in the spring of 1900? A. No.

Q. You don't remember it?

A. I don't remember it?

Q. You took up a timber claim there, Mr. Malone, in 1900. Do you remember that? A. Yes, sir.

Q. Will you kindly state to the Court the circumstances leading up to your making a filing upon that timber claim, and any conversation that occurred in relation to the same, and follow it on by the subsequent steps in the proceedings? **[272]**

COURT.—Go ahead. You can answer the question.

A. How is that?

Q. Just go along and tell who you went to see about it.

A. Oh, well, I saw the Mealey boys about taking the timber claim.

Q. Which one? Both of them?

A. Well, I think I talked with both of them. I think I did.

Q. What conversation did you have with them relative to taking a claim?

A. Well, they was to furnish me the money and I was to take the claim. They was to furnish the money to prove up—to file and prove up on.

(Testimony of Richard F. Malone.)

Q. And what else was there about it? What were they to get for furnishing the money?

A. I was to give a mortgage after I proved up, for the money that they let me have.

Q. And what did you do now?

A. Well, I went and located the land. Went to the Land Office and filed.

Q. Who was with you when you went to the Land Office to file?

A. Well, I think Mr. Lawrence, Mr. Watkinds—I don't know as I can just name all of them.

Q. Who paid your expenses to Roseburg at that time? A. I don't know.

Q. Who took you to see the land?

A. Mr. Thompson.

Q. Did you know the description of it at that time?

A. Yes, I had—I set it down. I had it on a paper at that time. I haven't got it by heart though.

Q. You set it down right there? A. Yes.

Q. Now, then, after you had filed at Roseburg, or when you went to file at Roseburg, did the same people go with you that went to see the land? **[273]**

A. No, Mr. Thompson did not go.

Q. He didn't go? Who went down with the party that went to Roseburg?

A. Well, I could not say now,—I have got the two trips mixed up—whether Mr. Mealey went both trips or not. He went one, but I could not say whether he went the first trip or not. I had the two trips mixed up.

Q. On the last trip was Mr. Mealey with them?

(Testimony of Richard F. Malone.)

A. Yes, the two of them.

Q. Both the Mealeys on the last trip down there?

A. Yes.

Q. How did you ascertain it was time to go on the second trip?

A. I think we was notified by the boys when it was time to go.

Q. What boys? A. Mr. Mealey's.

Q. And what sort of conveyance did they furnish to take you down?

A. I think that a man by the name of Gould went with the rig that time.

Q. Gould—what was Gould's first name?

A. Why, we called him Eckle.

Q. Alexander was his real name?

A. I don't know. We called him Eckle.

Q. Was he taking a claim?

A. I think he did.

Q. Whose rig was he driving?

A. His, I think.

Q. Who paid for it, do you know?

A. No, I don't.

Q. And when you hit the train did you pay any fare? A. No, sir. **[274]**

Q. Did you pay any expenses in Roseburg?

A. No, sir.

Q. Who paid them?

A. Don't know; could not tell you.

Q. Don't know who paid them. Did you see Mr. Kribs up there? A. No, sir.

Q. What? A. No, sir.

Q. Then, you went up to the Land Office and

(Testimony of Richard F. Malone.)

proved up? A. Yes, sir.

Q. Who went with you up there?

A. Why, all the crowd that was with us went up there.

Q. Who paid your proof money?

A. Couldn't tell you.

Q. Did you see any paid for you?

A. No, sir.

Q. Do you know who attended to that?

A. No, sir, I don't.

Q. Who did you understand was attending to it?

A. I supposed the Mealey boys.

Q. You didn't see any money?

A. No, I saw no money.

Q. In transfer. Well, after you had proved up what occurred?

A. Well, then we come across the street and I signed a mortgage for this money that they had put up for me.

Q. How much did they put up for you?

A. I don't know what the amount was.

Q. What did you think they were putting up for you?

A. I don't know as I even asked.

Q. You didn't pay any attention to the amount of the money? A. No, I didn't.

Q. Did you figure that they were loaning you any money? A. How is that? **[275]**

Q. Did you figure that they were loaning you any money?

A. Well, one way; that is, they was to pay my expenses and I was to give a mortgage afterwards.

(Testimony of Richard F. Malone.)

Q. Did you make any inquiry what your expenses had been? A. No, I didn't.

Q. Had you been to any expense?

A. Not none of my own. I hadn't put up nothing of my own.

Q. How big a mortgage did you sign?

A. I can't answer that; don't know

Q. Did you ever pay any mortgage?

A. How is that?

Q. Did you ever pay any mortgage since then?

A. I guess I surely did when I sold my land.

Q. How much did you pay?

A. How much I paid afterward?

Q. Yes.

A. I didn't pay nothing. I turned my land over.

Q. To whom?

A. I suppose to Mr. Mealey,—made the deed out. I sold to them, rather.

Q. Who had you borrowed the money from?

A. I suppose from them; don't know.

Q. Don't know anything about that at all. Never inquired that—who made the deal?

A. No, sir, I didn't.

Q. How much did you get? A. $50.

Q. When did you first discover that you were going to get $50 for the transaction?

A. When did I first?

Q. Yes.

A. Well, I was satisfied of that before I took the claim.

Q. Sure. Did you—what satisfied you of it?

A. Well, that was the understanding, that if a

(Testimony of Richard F. Malone.)

man proved up **[276]** he would make as much as $50 out of it.

Q. And who would pay him the $50?

A. Well, I supposed it would be the Mealey boys.

Q. What were they going to get for this $50?

A. The land, I suppose.

Q. That was what you understood before you ever started in?

A. Well, I don't know as it was just exactly said that way. I could not word it as said that way.

Q. It wasn't worded at all, but you understood it that way?

A. Yes, I might have understood it that way, but it wasn't worded that way.

Q. Where did you—how did you get this information that they would give $50 for those claims?

A. Well, I was around town all the time and I heard everybody talking. I was there all the time.

Q. What was the talk?

A. That was the chief—that was the chief talk all over town there—everybody.

Q. When they were talking, what would they say?

A. Anybody that would take a claim could get as much as $50 for it.

Q. From the Mealey boys?

A. Yes, I suppose maybe they had people talk it.

Q. After you heard that, what did you do?

A. I talked that some.

Q. What did you say?

A. I asked about that myself. Said I guess I can get as much, maybe, as $50 out of it.

COURT.—Who? Mealey? A. Mealey.

[277]

(Testimony of Richard F. Malone.)

COURT.—Which one?

A. Can't say which one—maybe both.

Q. When did they first talk about this mortgage business? A. That was right at the start.

Q. What?

A. Told me if I got any money I would have to give a mortgage after I proved up.

Q. When were you to turn it over and get the $50? A. How is that?

Q. How soon after you proved up were you to turn it over and get the $50?

A. Nothing said about how soon.

Q. Did you ever—did you know Fred Kribs in the transaction? A. No, sir.

Q. Did you see him down at Roseburg?

A. No, not that I know of.

Q. Now, did you get any money when you signed the mortgage at Roseburg?

A. Not that I remember of.

Q. You never borrowed any $700 in that transaction, did you? A. I never had no money.

Q. Did you sign a note?

A. I guess I did if there is a note with the mortgage. I don't remember just what I did sign. I remember about the mortgage.

Q. Who did you give the mortgage to?. Who took it? Who took the papers?

A. I don't know who the mortgage was drawed up to.

Q. Where did you go to sign it?

A. It was across the street from the Land Office. I don't know whereabouts. **[278]**

(Testimony of Richard F. Malone.)

Q. Were you married at that time?

A. Yes, sir.

Q. Was your wife there at Roseburg?

A. No, sir.

Q. Where was she? A. Sweet Home.

Q. How long after that—after signing the mortgage was it that you signed the deed?

A. I don't remember just how long it was.

Q. Well, what is your recollection now?

A. A short time, probably something—maybe a week. I could not say exactly.

Q. Just a few days, wasn't it?

A. Just a short time, at any rate.

Q. And who came to you to get the deed?

A. Well, I couldn't say. I could not say which one of the boys—which one of the Mealey boys. I could not say which one.

Q. What payment did he make to you at that time?

A. I know I got $50 when I signed it.

Q. Did he hand the mortgage back then?

A. I asked for it back then.

Q. And Mealey had it and gave it to you?

A. I don't know whether he gave it right then or not. If he didn't it was shortly afterwards.

Q. What?

A. I don't know whether he gave it then or not. If he didn't it was shortly afterwards. I could not say about that.

Q. Is this the mortgage that you mean? Just take it and look at it. Is that the mortgage?

(Testimony of Richard F. Malone.)

A. Yes, sir, that is my handwriting.

Q. That is your signature? A. Yes, sir.

Mr. McCOURT.—I offer that in evidence.

Marked "Government's Exhibit 30." **[279]**

COURT.—What is the date?

Mr. McCOURT.—The 9th of October.

I offer the deed in connection with it of Richard F. Malone and wife to F. A. Kribs, dated the 12th day of October, 1900, filed for record on the 15th day of October, 1900, conveying the same land embraced in the entry of the witness now on the stand.

Marked "Government's Exhibit 31."

Q. Do you remember after signing that deed, Mr. Malone, appearing at the residence of Wodtli in connection with your entry?

A. Yes, sir.

Q. How did you come to go there?

A. Well, I was notified I was wanted there.

Q. By whom?

A. Well, I don't know as I could tell exactly who I was notified by. I have forgotten that.

Q. Well, when you arrived there, who was there?

A. Well, Mr. Mealey; oh, there was quite a crowd there. I don't know as I can name them.

Q. What conversation did you have with either of the Mealey boys before you went in to make your affidavit?

A. Well, I don't know hardly what the conversation—what the conversation was.

Q. Well, now, did they give you any instruction?

A. I don't know.

Q. You remember in that—who was there at the

(Testimony of Richard F. Malone.)

time? A. No, I don't.

Q. Who—how many were in the room?

A. In the room where I went in?

Q. Yes.

A. I could not say how many was in there; quite a few in there. **[280]**

Q. Entrymen? Persons who had taken lands up there in that locality? A. Yes, sir.

Q. In the room where the Special Agent was?

A. I think so.

Q. You remember whether a young lady was there running the typewriter?

A. Yes, I think there was.

Q. Do you remember being asked this question at that time: "Who, if anyone, located you and selected the land? A. Mr. John Thompson. Q. What, if anything, did you pay him for his services?

A. Yes, I paid him $50."

A. No, I could not say whether I answered that.

Q. Were you in a state of mind at that time that you would have answered it in that way?

A. I don't know whether I would or not.

Q. That wasn't the truth, at any rate, was it?

A. I hadn't paid nothing for it.

Q. And you haven't since?

A. (Witness laughs.)

Q. Did you own any property at that time?

A. I think not; I wouldn't say, however, sure; I don't think so.

Mr. LIND.—I could not hear either the question or the answer.

Mr. McCOURT.—I asked him whether he owned

(Testimony of Richard F. Malone.)

any property or not at that time.

Mr. LIND.—What was the answer?

A. I don't think I did at that time. I am not right positive.

Q. "What disposition have you made of the land?

A. Sold it to Frederick A. Kribs for $850." Do you remember that [281] question and answer?

A. No, I don't remember that.

Q. Did you make—did you make any such answer there at that time?

A. I don't think I did.

Q. Were you asked how much you had sold your claim for?

A. I don't know whether I was or not; I don't remember it.

Q. Do you recall whether anybody told you when you were in there—when you should go in there—to make such an answer to such a question?

A. No.

Q. If it was asked you? A. No, sir.

Q. You say you never saw Mr. Kribs?

A. Not at that time.

Q. You have seen him since?

A. Saw him since, yes, sir.

Q. Lately?

A. Saw him—yes, a week or two ago.

Q. He was up there in that community, was he not? A. I just saw him when he was up there.

Q. Did he call on you and talk to you?

A. No, sir.

Q. "How much money did Mr. Mealey deliver to you in payment of the land when you gave him the

deed? A. $850. Q. Why should he give you $850 for Mr. Kribs, when you already owed Mr. Kribs $700? A. $850 was what I was to get for my claim. He gave me $150 when I delivered the deed." Do you remember those questions and answers?

A. Don't know as I do; don't believe I remember them.

Q. That was not a fact, whoever answered it, was it? A. No, sir.

Q. I will ask you if at the time you made final proof you **[282]** remember besides Alex Gould being there, of John J. Gilliland being there?

A. I think he was.

Q. Jasper H. Keeney? A. Yes, sir.

Q. His wife? A. I think so.

Q. Keeney's wife? A. Yes, sir.

Q. William J. Lawrence?

A. Yes, I believe he was.

Q. Richard F. Malone?

A. That is myself.

Q. That is yourself? Louis Maynard?

A. At final proof?

Q. Yes.

A. Yes, I believe he was there then.

Q. J. W. Rozell?

A. He may have been. I would not say for sure whether I saw him or not.

Q. Sydney Scanland? A. Yes, I saw him.

Q. Cornelius Tuthill?

A. I would not say about that.

Q. The old gentleman?

A. He might have been there, but I wouldn't—

(Testimony of Richard F. Malone.)

Q. You don't recall it?

COURT.—Mr. Malone, at the time of the examination before the Special Agent, were the questions and answers written out in your presence?

A. Well, I don't know. They might have been—part of them.

COURT.—Who asked the questions? Who asked them of you?

A. I don't know the man at all. Didn't know him.

COURT.—Was he a Special Agent—pretending to be a Special Agent? A. I think so.

COURT.—Did he have a typewriter or stenographer there? **[283]** A. Yes, sir.

COURT.—The questions—you don't remember whether they were all asked and answered?

A. No, I don't remember whether they was or not.

COURT.—Was it read over to you after you completed your examination?

A. Well, I could not say whether it was or not. I tell you—

COURT.—How did you come to sign it?

A. I could not tell you that. I guess I signed it, but I could not tell you how.

COURT.—Where did you get the information upon which you based your answers?

A. There, you mean?

COURT.—Yes, for that Special Agent? You say in that answer that you sold this property to Kribs for $850. Where did you get that information?

A. I don't know where I got that.

COURT.—You say you paid the locator a fee of

(Testimony of Richard F. Malone.)

$50—agreed to pay him $50 for locating. Where did you get that information?

A. I could not tell you that, either.

COURT.—Now, you said you didn't remember that Mealey said anything to you about what your answers should be before you went into the room. Did you hear him say anything to the other people standing around there?

A. He was in the room.

COURT.—I know, but outside. Counsel asked you if he said anything to you on the outside before he went into the room, and you said "Not to me," as I remember.

A. He was talking to the others, but of course I could not tell what he said.

COURT.—You don't know what he said? **[284]**

A. No, I couldn't say what he said to the others.

Q. (By Mr. McCOURT.) Wasn't it commonly understood among all you entrymen there that there was a little trouble there and that you were to stand by the Mealeys on it and answer up so as to make a good report?

A. Well, there was something like that, but I couldn't say just how.

Q. Who was leading the conversation of that kind there?

A. I don't know. That is, I called them boys. The crowd of us was all talking, and I couldn't tell exactly.

Q. Was Mealey circulating among you?

A. They was there, yes, talking to us all.

Q. Isn't it a fact that Mealey gave you the

(Testimony of Richard F. Malone.)

amount of that deed—the consideration named in that deed—and told you to tell the agent that is what you got?

A. I don't know whether I told that or somebody else told that.

Q. Was Mealey there?

A. He was in there.

Q. Was he answering part of the questions for you? A. He answered some.

Q. Did he answer all of those kind of questions—

A. Could not say.

Q. —relating to figures?

A. Could not say.

Q. What did the Special Agent say when Mealey was answering the questions for you?

A. The way I see that now, after he made these papers up he handed it to them to look it over.

COURT.—Handed it to whom? A. Mealey.

[285]

COURT.—The Special Agent did it?

A. That is the way it was.

COURT.—Who was the Special Agent?

A. I don't know his name at all.

Q. That is your signature, is it not, to this affidavit? A. I believe it is.

Q. There was a younger man there than the Agent himself. Do you remember his name?

A. No, sir.

Q. A man by the name of Van Zant? What part did he take in the deal, whoever he was?

A. I could not tell you. I don't remember much about that.

(Testimony of Richard F. Malone.)

Q. Did he ask any of the questions?

A. I could not say whether he did or not.

Q. Did he answer any of the questions?

A. Could not say.

Cross-examination.

(Questions by Mr. LIND.)

In this conversation that you had among you before you went into the house, the question of having given a mortgage was talked over, wasn't it? I mean, at Wodtli's, before you went into the house—before you went in to see the Special Examiner? You were talking about those claims generally, were you not?

A. We was talking something about them, yes.

Q. Well, the matter of having signed the mortgage came up, didn't it? Didn't you all talk that and say that you had given a mortgage? Wasn't that understood?

A. Well, I couldn't say now whether the rest of the boys said that or not. I knew I gave a mortgage, but don't know what the rest—

Q. Wasn't the talk that that mortgage included some amount [286] for the Mealeys for locating you? Wasn't the talk there among you that there was included a certain amount in that mortgage on account of the Mealeys locating you—that they got some of the proceeds of that mortgage?

A. I could not say about that.

Q. Well, you knew that yourself, did you not?

A. I don't know as I just understand the question just right as you ask it.

Q. You knew that you had given a mortgage for

(Testimony of Richard F. Malone.)

$600 or $700, didn't you?

A. I knew I gave a mortgage, but I didn't know how much. Didn't know what the amount of the mortgage was.

Q. Was there anything said about that in this talk that you had in the yard in front of Wodtli's house?

A. I don't know whether there was or not—about the mortgage.

Q. What was talked about there?

A. Well, we didn't know what—we didn't know what was there; didn't know what was going against. Didn't know what we was going up against. We didn't understand it.

Q. What were you told? A. How is that?

Q. What were you told? Did anybody tell you what was coming up?

A. Not only among ourselves. We was talking among ourselves.

Q. What did you talk among yourselves?

A. We was just kind of guessing—kind of guesswork what was going on.

Q. When you were doing that talking and guessing, didn't you talk that this mortgage included a certain amount for the Mealeys—for the Mealey boys? That they got something out of it for locating you? [287]

A. I don't know; I can't say about that—whether there was or not.

Q. Did you ever find out—did you know then how much the Mealeys sold the land for? You knew at that time that the Mealeys had sold the land, did you

(Testimony of Richard F. Malone.)

not? A. That they had sold it?

Q. Yes, that you had deeded?

A. That I deeded it away myself?

Q. Yes.

A. Yes, I knew I deeded it to them.

Q. You didn't sell it yourself, did you? You didn't negotiate the sale—you didn't make the sale yourself, did you? A. No, sir.

Q. Of the land. Who made it?

A. You mean, who made the sale?

Q. For you?

COURT.—Made the sale to Kribs—who sold this land?

A. Oh, to Kribs? I suppose I did, but I didn't know who I deeded it to.

Q. Well, as a matter of fact, didn't the Mealeys sell it? Don't you know that now, that they negotiated the sale? A. I suppose they did.

Q. You weren't having any talk with Kribs?

A. No.

Q. Never seen him in your life up to that time?

A. Didn't know him at that time at all.

Q. Wasn't it talked among you that the Mealeys got about $800 a quarter for the land when they turned it over—sold it to Kribs?

A. Well, I don't know; I might have heard such talk as that.

Q. Well, didn't you, as a matter of fact? Now, think **[288]** it over. Wasn't that talked right there?

Mr. McCOURT.—I object to that as immaterial.

COURT.—I suppose counsel wants to know how

(Testimony of Richard F. Malone.)

the question came up; what conversation he had before he went into this room.

A. Of course, it is pretty hard for me to say what our conversation was. I don't hardly remember it.

Q. Did you ever inquire—did you ever hear it suggested what amount the Mealeys got for the land?

A. In a roundabout way, but not direct—straight.

Q. Now, what did you learn in a roundabout way? That is what I want to get at.

A. Well, I always heard $700 or $800—along there.

Q. When did you hear that? Now, we are getting along nicely. I want you to answer these questions frankly—just as you know them.

A. I had been hearing that right along, all the time, but I didn't know.

Q. Heard it from the time of the sale, didn't you?

A. Yes, but didn't know.

Q. Didn't know how much they got?

A. No.

Q. You were contented to sell as long as you got your $50? A. Yes, sir.

Q. Now, did you know when you went down to file on this land that the Mealeys were going to sell it for you? A. No, sir, not that way.

Q. What did you hear—what way did you know it?

A. What way did I know they was going to sell it for me?

Q. Yes.

A. Why, I didn't *know was* going to sell it for me at all. **[289]** Thought I would sell it when I proved

(Testimony of Richard F. Malone.)
up, maybe.

Q. You did think that you would sell it yourself?

A. Yes.

Q. When did you come to a different conclusion?

A. I didn't know I had come. I thought I did sell it.

Q. Why, you knew you hadn't sold it before you entered it?

A. No, not before entered, but afterwards—after I proved up.

Q. Well, you thought you sold it through the Mealeys? A. Yes.

Q. Or to the Mealeys?

A. To the Mealeys; yes, sir.

Q. Had you ever intended to sell it before that time? A. Before I proved up?

Q. Yes. A. No, sir.

Q. Had you ever bargained to sell it?

A. No, sir.

Q. Had you ever intended to sell it before you proved up? A. No, sir.

Q. Now, Mr. Malone, if somebody had come to you about the time you proved up at Roseburg and the time you gave the deed to the Mealeys, and offered you a thousand dollars for that claim, would you have taken it?

A. I might have, if I could have got rid of that mortgage.

Q. Well, you would have had the money then to pay the mortgage, wouldn't you?

A. I suppose I would.

Q. Now, what I want to get at—and I want you

(Testimony of Richard F. Malone.)

to tell me the absolute truth—was there anything to prevent you from selling that claim, subject to the mortgage, after you had proved up on it?

A. Of course, I don't know as there was, myself. I don't know myself. I don't understand it well enough to know. **[290]**

Q. Had you said or done anything that would have prevented you from selling it?

A. Not that I know of.

Witness excused.

Whereupon proceedings adjourned until Wednesday, April 27, 1910, at 10 A. M. **[291]**

Portland, Ore., April 27, 1910, 10 A. M.

[Testimony of Samuel D. Pickens, for the Government.]

SAMUEL D. PICKENS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Q. Where do you live, Mr. Pickens?

A. Foster.

Q. How long have you lived there?

A. Oh, I have lived around that neighborhood for 50 years.

Q. Do you know O. J. Mealey and W. R. Mealey?

A. Yes, sir.

Q. Did you know them as early as 1900?

A. Yes, sir.

Q. How long had you known them prior to that time? A. Which?

Q. How long had you known them before that?

(Testimony of Samuel D. Pickens.)

A. Well, quite awhile. I don't just know.

Q. How near to them did you live?

A. About seven or eight miles.

Q. Do you know John A. Thompson?

A. Yes, sir.

Q. How long had you known him before that?

A. Oh, quite awhile; ever since he come to the country; I don't know just how long that was.

Q. You knew him before that time too?

A. Yes, sir.

Q. Do you know Fred Kribs? A. No, sir.

Q. Never met him?

A. Never saw the man till I saw him here. They said it was him—that was all I know.

Q. Are you a married man? A. Yes, sir.

[292]

Q. Were you married in 1900?

A. Yes, sir.

Q. What was your business then?

A. Well, working.

Q. How is that?

A. Working around on a ranch.

Q. A farm hand?

A. Yes, a farm hand.

Q. Do you recall taking up a timber claim up in that country in 1900? A. Yes, sir.

Q. Tell the Court what led up to your taking it, and what you did in regard to it.

A. Well, I just told the Mealeys I wanted a timber claim, and I just spoke to the Mealeys to locate me.

Q. How did you happen to go to Mealeys?

(Testimony of Samuel D. Pickens.)

A. Well, they was in the business of locating.

Q. How long had they been in the business of locating when you went to see them?

A. Well, I couldn't say just how long.

Q. About how long?

A. Well, I couldn't say.

Q. Two months?

A. Yes, and maybe longer. I couldn't say. It has been so long ago—I didn't pay much attention to it.

Q. Well, what had you heard about them before you went to see them?

A. Well, I never heard nothing that amounted to anything.

Q. Well, what was the proposition?

A. Well, to go up into the timber and run through it.

Q. What inducements were they offering you to locate? **[293]** A. Nothing at all.

Q. Nothing?

A. No. Well, I wanted a claim—I wanted a timber claim.

Q. What did they say to you when you went to see them?

A. Well, they said all right—maybe they could locate me.

Q. What did they say they would do besides locating you?

A. Well, go to Roseburg and prove up.

Q. What?

A. To go to Roseburg and make final proof.

Q. Who would? A. I would.

(Testimony of Samuel D. Pickens.)

Q. What would they do? A. Which?

Q. What did they say they would do?

A. Well, I don't know just what they did say.

Q. Yes, you do. Now, tell us.

A. To locate me on a piece of timber.

Q. Who was going to pay your expenses?

A. They was—they was going to pay the expenses.

Q. What else were they going to pay you besides expenses? A. Pay everything.

Q. What were you going to get out of it?

A. Well, I don't know what I was going to get out of it at the time.

Q. What?

A. I don't know at the time what I was going to get out of it.

Q. You don't? Well, what did you think you were going to get out of it?

A. Well, I didn't know.

Q. What? **[294]**

A. I didn't know then just what I would get out of it.

Q. Whom were you going to get what you were going to get out of it from?

A. I couldn't say that.

Q. What? A. I don't know.

COURT.—What did you take the claim for?

A. Why, I took my claim to sell it.

Q. Well, who was with you when you went up to look at the land?

A. Well, there was Will Wiley and George Pickens and Tom Parker and Billy—no, not Billy; he wasn't there; Bill Mealey and Oliver Erickson and

(Testimony of Samuel D. Pickens.)

Joe Steingrandt.

Q. Andrew and Charles Wiley there?

A. Charles Wiley, yes.

Q. Joseph H. Steingrandt. Did they all go up in the timber the same time you did?

A. Yes, sir. And a man by the name of Mickalson too.

Q. Joseph Mickalson? A. Yes, sir.

Q. Was either one of the Mealey boys along?

A. Yes, sir.

Q. Which one? A. Will Mealey.

Q. How long did it take you to examine the timber?

A. We was gone about two days, I think.

Q. And how long after you came back was it before you went to Roseburg?

A. I don't know just how long.

Q. Well, about how long?

A. Oh, it might have been a week.

Q. Well, how did you get from Foster, then, to Roseburg? **[295]**

A. We went through—went down by Albany, through Lebanon, that way.

Q. Who furnished the conveyance?

A. Well, sir, the Mealeys. I suppose they did.

Q. What?

A. I don't know whether they took their team or not—I couldn't say; but then they went down, I think some of us on the hack. I don't know just how we did get down now; don't just recollect whether they had a team along or not.

Q. Who paid your railway fare?

(Testimony of Samuel D. Pickens.)

A. Mealeys.

Q. And your hotel bill?

A. Mealeys. I suppose they did.

Q. And when you went the second time, to make proof, who paid your expenses?

A. Everything was paid.

Q. Did you have anything to do with publishing notice of final proof? A. Which?

Q. Did you have anything to do with publishing any notice in the paper about making proof on your timber claim? A. No.

Q. What?

A. No, I had nothing to do with that at all.

Q. Who gave you the description of your land?

A. Mealeys—Bill Mealey.

Q. Did he show you over the quarter section that you took?

A. I was over, I don't know how much of it.

Q. Did you ever get onto it at all? **[296]**

A. Oh, yes. Yes, sir; I was onto it.

Q. What? A. Yes, I guess I was.

Q. Do you know where it is to-day?

A. No, sir, I don't suppose I could find it to-day.

Q. Never been back there since?

A. Never been back there since.

Q. Now, when you went to Roseburg, did Oliver Erickson go with you? A. Yes, sir.

Q. On the train? A. Yes, sir.

Q. Sure? A. Oliver Erickson?

Q. Yes. A. I think he did.

Q. Didn't he ride a bicycle down?

A. Well, sir, that is so. He did ride a bicycle

(Testimony of Samuel D. Pickens.)

part way all right. I don't know just where he got a bicycle on the road, some place, that is right. It is so long ago, I don't just remember everything.

Q. But he showed up there at Roseburg at the time of proof?

A. Yes, sir, he showed up there.

Q. Well, now, did all of you go to the Land Office together? A. Yes, sir.

Q. Well, after you had made proof, what did you do?

A. Well, then I went out to a lawyer's office and made out a mortgage.

Q. To whom? A. I suppose to Kribs.

Q. Well, did you know then who it was to?

A. No, I didn't. **[297]**

Q. Did you make any inquiry?

A. No, sir, I never inquired.

Q. Did you know how much it was for?

A. Well, I guess $600, or something—enough to pay.

Q. Well, at that time did you know?

A. No, I didn't know at the time.

Q. You made no inquiry?

A. I made no inquiry.

Q. Did you do any figuring with Mealeys to find out how much expenses they had been to?

A. No, I did not.

Q. They never told you, did they? Did they ever tell you?

A. I don't think they ever did. I never heard anything about it.

Q. Never inquired? A. Never inquired.

(Testimony of Samuel D. Pickens.)

Q. What did you do after you signed the mortgage?

A. Well, after signing the mortgage we went home after a little,—went back home.

Q. Went back home? A. Yes.

Q. When did you get your $50?

A. After signing the deed to deed it over.

Q. How long was it afterwards you signed the deed?

A. I couldn't say. It wasn't a great while.

Q. About three or four days, wasn't it?

A. Probably.

Q. As soon as you had gotten home?

A. Yes, as soon as we got home, I guess, three or four days.

Q. Your wife wasn't down at Roseburg, was she?

A. No, sir. **[298]**

Q. Did you see Kribs at Roseburg?

A. No, sir. I didn't know him.

Q. Who paid for your land? Who paid the purchase price to the Government for the land?

A. Well, I suppose Mealeys.

Q. Now, isn't it a fact that before you went to see Mealey about filing you at all, you had heard in the community there—it was generally reported around there—that they were paying $50 for persons to locate on land?

Mr. LIND.—That is objected to as leading, and there is no evidence to which that could apply.

COURT.—He may state what he heard about that, I think.

A. I never heard anything about it. Oh, of

(Testimony of Samuel D. Pickens.)

course, I did hear, too, rumors around, you know, about $50 in it.

Q. Well, was that what caused you to go and see Mealeys? A. No.

Q. What?

A. No, that wasn't what caused me.

Q. Well, what caused you to go there?

A. Well, I just thought maybe I wanted a timber claim?

Q. What? A. I wanted a timber claim.

Q. You wanted a timber claim?

A. Yes, sir.

Q. How long did you keep that timber claim when you got it?

A. Well, I didn't keep it very long.

Q. What kind of money did Mealeys pay you in?

A. Paid me in gold.

Q. What? A. Paid the gold coin.

Q. Out there at Sweet Home?

A. Yes, sir, right there at Foster.

Q. At Foster? Do you remember being down here in [299] 1904 or 1905? A. Yes, sir.

Q. Before the Grand Jury? A. No, sir.

Q. You were subpoenaed to appear before the Grand Jury? A. Yes, sir, I was subpoenaed.

Q. You didn't go before the Grand Jury?

A. No, sir.

Q. You were taken sick and went home?

A. Yes, sir.

Q. And nobody talked to you here?

A. No, sir.

Q. Did anybody talk to you after you went home

(Testimony of Samuel D. Pickens.)

about this transaction?

A. No, not for—till after I had to sign up an affidavit.

Q. Whom did you sign that affidavit before?

A. Bill Mealey.

Q. Did he draw it for you?

A. I don't know whether he did or not. He brought it there to my house to sign.

Q. I show you an instrument purporting to be an affidavit made by you before William R. Mealey on February 1st, 1905, and ask you if that is your signature?

A. I guess it is. It looks like it.

Q. I will ask you if you remember making this statement in that affidavit—

Mr. LIND.—That, your Honor, is objected to as immaterial. It is subsequent to the issuance of the patents in this case. It is in 1905, isn't it?

Mr. McCOURT.—Yes. It is for the purpose of refreshing the witness' memory, showing he made different statements at other times than he is making right now.

Mr. LIND.—It seems to me, your Honor, that the [300] ruling suggested on yesterday or the day before, that evidence of this character might be material under the theory suggested by District Attorney, does not reach this point. Here is an *ex parte* affidavit, made probably with reference to some other proceeding, after the patents had issued in this case.

COURT.—I understand the District Attorney is using it for the purpose of refreshing the witness'

(Testimony of Samuel D. Pickens.)

memory for cross-examination, not for substantive proof.

Mr. LIND.—Oh.

Q. Among other things, did you not state in that affidavit this: "He further states that some time about June of the year 1900 he decided to take a timber claim; he therefore went to the Mealey brothers and Thompson, as he knew them to be locators. He also says: 'It was commonly known in the community that there was $50 in it clear of all expenses.' "

A. I don't know anything about that.

Q. Don't remember making that statement to Mr. Mealey? A. No.

Q. Did he make it for you?

A. I don't know whether he did or not.

Q. Did you read the affidavit that he had you sign? A. No, I never read it at all.

Q. What? A. Never read it.

Q. You didn't read it?

A. No, sir, I didn't read it.

Q. And do you remember this: "William R. Mealey showed me and several other parties our claims. O. J. Mealey went with us to Roseburg when we filed and paid all expenses incidental to the trip. My notice of final **[301]** proof fee was also paid, and when the time came to make proof, we went to the Land Office, and after I had proved up, on the afternoon of the same day, I went before an attorney, and made a mortgage covering the land to F. A. Kribs, for, I believe, $700. Afterward the Mealey brothers or Thompson gave me $50. I do not know who paid for the land at the Land Office." Don't

(Testimony of Samuel D. Pickens.)

you remember any of those statements?

Mr. LIND.—How does that differ from his statements here?

A. I don't remember a thing about it at all.

Q. You do remember the incident of signing the document?

A. That is just about all I do remember, yes, sir.

Q. Now, then, doesn't that state the truth there, that it was commonly known in the neighborhood that there was $50 in it clear of all expenses?

A. There was no bargain made with me.

Q. I understand; but wasn't it commonly known there?

A. Well, yes, it was talked around that way.

Q. Yes? A. Yes.

Q. And that was why you went to see the Mealeys about it? A. There was no bargain made.

Q. I understand there was no bargain made; but that is why you went to see Mealeys, wasn't it?

A. Because there was $50 in it?

Q. Yes, because you heard that?

A. Well, I couldn't say.

Q. What is that? A. I couldn't say.

Q. Well, that is all you got out of it, wasn't it?

A. Yes, it is all I got out of it.

Q. Did you ever do a thing in regard to that timber claim **[302]** except as you were told by the Mealeys to do?

A. No, I never. They was to see that I got a buyer, you know,—do all they could to get me a buyer.

Q. They did everything. Whom did you deed the land to? A. Kribs, I suppose.

(Testimony of Samuel D. Pickens.)

Q. Whom did you think you were deeding it to?

A. Kribs, I suppose it was.

Q. How did you know Kribs? Well, how did you know about Kribs?

A. I d*in*'t know a thing about him.

Q. Did you know Kribs was in the transaction at the time?

A. Well, I heard he was. That is all I know about it.

Q. How long did you hear that before you filed?

A. Well, I couldn't say.

Q. Now, do you remember, about a year after you had made the deed, of making an affidavit before a man of the name of Stratford down at Wodtli's?

A. Yes, sir.

Q. Who notified you to go down there?

A. I don't know just who.

Q. Well, who do you think it was?

A. I think Mealeys, though, I think.

Q. Which one of the Mealeys?

A. Well, I couldn't say which one.

Q. How did you get down there?

A. I walked down.

Q. How many people were there when you arrived? A. I couldn't say just how many.

Q. How far did you live from Wodtli's at that time?

A. At that time I was about half a mile, I guess.

Q. Where did you go to make your statement?

[303]

A. Wodtli's.

Q. Whereabouts—in the house?

(Testimony of Samuel D. Pickens.)

A. Yes, sir.

Q. Who was in the room when you got in there?

A. Well, I found an old fellow in there with a book, and a lady there with a typewriter and another fellow sitting there with a pen in his hand.

Q. Which one of the Mealey boys was in the room?

A. I don't know whether there was either one or not at the time. I couldn't say.

Q. What kind of a conversation did you have with either one of the Mealeys before you went in there?

A. Oh, I couldn't say just what now.

Q. Did you have some conversation?

A. Well, yes, I might—I don't know.

Q. Relative to what you would have to say when you got in there?

A. No, I didn't know just till I went in there what I would have to say.

Q. You didn't? Well, now, do you remember saying this: I will ask you first if this is your signature to the affidavit of claimant in Government's Exhibit 11?

A. My name? No, sir, that ain't my name at all.

Q. You didn't write that?

A. No, sir, I didn't write that, no, sir, I didn't.

Q. Did you sign any document there at that time?

A. No, sir, no documents there at all. I didn't sign nothing at all.

Q. Did they ask you many questions?

A. Oh, yes, they asked me some questions.

Q. All right. Do you remember them asking you this question: "Did Mr. Mealey or anyone else sug-

(Testimony of Samuel D. Pickens.)

gest to you that you enter this land? A. No, sir. Q. What did **[304]** you pay Mr. Mealey for his services? A. $50." Do you remember answering that? A. I couldn't say.

Q. Did you pay Mr. Mealey any $50 for locating you? A. No, sir, I didn't.

Q. Or any other sum?

A. No, sir, I didn't.

Q. Do you remember this question: "What disposition have you made of the land since you obtained the title to it? A. I sold it to Mr. Frederick A. Kribs. Q. How much did you receive for it? A. $840." Do you remember that?

A. I didn't receive any at all.

Q. Do you remember that question being asked you there?

A. It might have been. I couldn't say.

Q. Do you remember*ing* answering any such question that way?

A. Well, no. I don't just remember anything much about that affidavit. I might have all right.

Q. Well, how could you have done it? You didn't know anything about there being any $840 in the transaction, did you? A. No, sir, I didn't.

Q. Who gave you the information if you did so answer? A. Well, I couldn't say just now.

Q. Was it Will R. or Judd Mealey?

A. No, I don't think it was.

Q. Another question, "Who did you borrow the money from to pay the Government for this land and the other expenses? A. Mr. Frederick A. Kribs. Q. How much did you borrow? A. $600. Q. Did

(Testimony of Samuel D. Pickens.)

you have this transaction with Mr. Kribs personally, or with someone acting for him? A. Mr. Kribs personally." Did you ever have any transaction **[305]** with Mr. Kribs, personally?

A. No, sir, I never.

Q. Did you ever have any conversation with him at all?

A. Not at all, sir; not at all. Never saw the man till I saw him here the other day—they said it was Kribs.

Q. "Q. Now, is it not a fact that you did not handle any of this $600 or of the $840 except the profit which came to you in the deal? A. No, sir, I got the $600 and paid it out myself."

A. Well, I never done it.

Q. You didn't pay out a cent, did you?

A. Didn't pay out a cent.

Q. Never saw a bit of money except $50 that was paid you?

A. No, sir. That is just what I did.

Q. "How much money was paid you here at Foster at the time you delivered the deed? A. I don't know just exactly. Q. Was it $840 or was it the difference between $840 and the amount you owed Mr. Kribs on the mortgage? A. $200 or $250."

A. I didn't receive no money there.

Q. Don't you remember answering those questions now?

A. Well, I might have answered them, some of them. I might have answered some of them.

Q. You were prpared to answer anything in there that would help the transaction go through, weren't

(Testimony of Samuel D. Pickens.)

you? A. Yes—

Q. And all the rest of them were that were there at the time, weren't they?

A. To kind of clear it up, you know.

Q. Wasn't that the common talk among you there, that **[306]** you would go just as strong as was necessary, to make the thing go through?

A. To kind of clear it up.

Q. Well, did you think it was necessary to make all those false statements in order to clear it up?

A. No, sir; I didn't say that.

Mr. GEARIN.—He says he didn't sign that affidavit, Mr McCourt.

Mr. McCOURT.—He says he might have made them.

A. Yes, I might have made them. I couldn't swear to it.

Mr. McCOURT.—He says he was prepared to make any old statement.

Q. I wish you would look at that signature again, and see if you don't think that is your signature.

A. No, sir, that is not. I can't write that well. I ain't got education enough.

Q. Well, now, look at your signature upon your Timber and Stone Sworn Statement, here, or upon your Nonmineral affidavit, for instance, taken in the timber claim. A. No, sir, I never wrote that.

Q. What? A. It is not my writing at all.

Q Well, I guess you don't remember.

A. I don't know anything about that.

Q. I call your attention to your signature on the Timber and Stone Sworn Statement made upon your entry.

(Testimony of Samuel D. Pickens.)

A. No, I don't remember anything about that.

Q. Well, don't you remember signing any papers when you went to Roseburg?

A. I signed a—let's see that.

Q. You signed your proof paper, did't you?

[307] A. I think I did.

Q. Well, look at your proof paper now, and see what you think of it.

A. Is that it there?

Q. Yes. A. I might have signed it.

Q. Yes, I guess you signed it all right. You were prepared to sign anything that was offered you to sign, in the transactions, weren't you?

A. Oh, I could have signed it, I guess just as well.

Mr. McCOURT.—I offer in evidence certified copy of mortgage to Frederick A. Kribs bearing date August 27, 1900, purporting to secure the sum of $600 on the land embraced in the witness' entry.

Marked "Government's Exhibit 32."

Mr. McCOURT.—Also deed to Frederick A. Kribs of the entryman and wife to the same land, bearing date September 1, 1900.

Marked "Government's Exhibit 33."

Mr. McCOURT.—There isn't any question about it, but I would like to offer the original files in his entry for the purpose of comparison of signatures.

Mr. LIND.—Oh, well, I wouldn't encumber the record.

Mr. McCOURT.—Perhaps we can admit among ourselves that he did sign the affidavit.

Mr. LIND.—I presume so.

Mr. McCOURT.—No doubt of it in the world.

(Testimony of Samuel D. Pickens.)

Mr. LIND.—I presume he did, yes.

Mr. UELAND.—Here is the original deed. I think that would show.

Mr. LIND.—There is no issue on that anyway.

Mr. McCOURT.—No. The deed may go in if you [308] wish, with the original deed or with the other affidavit.

Mr. UELAND.—Mr. McCourt, suppose you let the original deed be in the record instead of the copy of deed. Then you have that for comparison, and withdraw your copy of deed.

Mr. McCOURT.—Yes, I can substitute the original for the copy.

Mr. UELAND.—Yes.

The original deed substituted for copy and marked "Government's Exhibit 33."

Q. Which of the Mealey boys did you see when you went to talk about a timber claim?

A. Bill Mealey.

Q. Which of them went with you when you went up to the timber? A. Bill Mealey.

Q. Who went with you to Roseburg?

A. Bill Mealey, I think. When we went to file on the land. It was one or two of them boys; whether they was both along or not, I couldn't say.

Q. You never asked anyone else to buy your land?

A. No, sir, I never.

Q. You never asked anybody else to let you have money to prove up on your land? A. No.

Q. You understood before you ever filed that they would pay all expenses and all money of all kinds?

A. Yes, that was the understanding, that they

(Testimony of Samuel D. Pickens.)

was to pay the whole thing.

Q. And you also knew that they didn't have money of their own? A. Mealeys? **[309]**

Q. Yes.

A. They didn't have money—I suppose they could get money.

Q. What had they been doing before they started this locating business?

A. Well, they was ranching up there. They had a ranch up there.

Q. A mountain ranch?

A. A mountain ranch.

Q. How much of a ranch?

A. Oh, they had a pretty good ranch.

Q. How many acres?

A. Oh, I couldn't tell you that.

Q. What did they raise on their ranch?

A. Oh, they raised grass and stuff, kept stock there.

Q. Did you examine the deed at all that they brought to you to sign out there at the ranch?

A. No, I never. I just signed it.

Q. You made no question at that time of what they were going to pay you?

A. I don't think I did.

Q. They came right along and handed you the $50, and you signed the deed? Neither one of you said a word about it.

A. That is about the racket.

Cross-examination.

(Questions by Mr. LIND.)

Do you remember when you signed that paper that

(Testimony of Samuel D. Pickens.)

you say Will Mealey brought to you to sign—the affidavit? This paper here?

A. Well, I remember him bringing something like that there. At that time I was pretty sick. I didn't pay **[310]** much attention to it.

Q. What was the occasion? What was going on in Portland at that time?

A. Well, I suppose Court. I don't know what else.

Q. That was the time that they had the Grand Jury in session? A. I think so.

Q. And found indictments? A. Yes, sir.

Q. And sent the marshal after settlers up in your section? A. Yes, sir, I think so.

Q. You signed that statement so that you wouldn't have to go—wasn't that it?

A. Yes, sir, I thought that would clear it up maybe.

Q. Well, didn't you understand that Burns had dictated that and sent it up for you to sign?

A. Yes, sir, I did.

Q. Did Mealey tell you so?

A. Yes, sir, Bill Mealey told me that.

Q. And he told you if you signed that paper and sent it to Burns you would not have to go down?

A. Yes, sir, that would let the thing out.

Q. As a matter of fact, you were pretty frightened?

A. Well, yes, I didn't know but maybe they were going to hang me.

Q. And you are still frightened, are you not?

A. Well, no, not so very bad.

(Testimony of Samuel D. Pickens.)

Q. Not so very bad? A. No.

Q. You have had a number of conferences with the District Attorney when you came down, have you not?

A. Oh, I have been talking with some of them.

[311]

Q. Well, he has hauled you over the coals a good deal, hasn't he?

A. Well, all he told me was to tell the truth. As long as I tell the truth, I guess it is all right.

Q. Now, have you told the truth frankly?

A. Well, I aimed to.

Q. How?

A. I aimed to tell the truth.

Q. Now, I will ask you a few questions and see if you cannot refresh your memory. Do you remember the occasion when you were at Wodtli's house, when the special agent was up there, a year after—about a year after you had made your timber claim?

A. Yes.

Q. What time of the day were you there?

A. Well, sir, I don't know. It might have been along in the afternoon now; I don't know; probably it was along in the afternoon.

Q. How did you find out that you were wanted there?

A. Well, through Mealeys, and then I think it was in the papers, you know. Some way I found it out all right. I don't know just exactly how. I couldn't swear.

Q. Where did you stop when you first got to Wodtli's place?

(Testimony of Samuel D. Pickens.)

A. Stopped right at the house.

Q. Did you go into the house the first thing?

A. Well, I think I did, yes. I went right in the house. I think I did—of course I don't know positive.

Q. Didn't you say a moment ago that there was quite a number of men there?

A. Oh, there was a few there. I don't know just how many.

Q. Where were they—in the house or outside? **[312]**

A. Some of them was in the house, some on the outside.

Q. What were they talking about?

A. Well, sir, I couldn't say hardly now. I don't remember much about that. My memory is awful—I can't remember anything any more.

Q. Wasn't that the first time that you ever heard Kribs' name mentioned to know it?

A. Yes, I don't know but it was.

Q. Well, had you heard—now, we want to find out—had you heard Kribs' name mentioned before?

A. Well, I couldn't say.

Q. Wasn't it the talk there among the men that you had given a mortgage to Kribs, that Kribs was the man that you had given the mortgage to?

A. Yes, sir; I think so.

Q. And that it was for $600 or some such amount? A. Yes.

Q. Wasn't that talked among the men standing there at Wodtli's?

A. Yes. Yes, it was. I remember that.

(Testimony of Samuel D. Pickens.)

Q. Wasn't it also talked that this land had been sold by the Mealeys to Kribs for about $800?

A. Yes, sir.

Q. $840? A. Yes.

Q. Isn't that where you got your figures?

A. Yes, it is something about there.

Q. Didn't all of them understand at that time, who were there at Wodtli's, that that was the situation? A. Well, they ought to.

Q. How?

A. I say they ought to understand it—something like that. **[313]**

Q. Well, that was the talk among you?

A. Yes, sir, it was. Yes, it was the talk amongst us.

Redirect Examination.

Q. Where did you get the figures when you answered that you had paid him $50 for locating you?

A. Where did I get the figures?

Q. Yes.

A. Well, I suppose they—well, I couldn't say.

Q. Where did you get the figures when you stated that you had the whole $600 mentioned in the mortgage in your own hands personally, and paid it out?

A. Where did I?

Q. Yes.

A. I don't remember anything about that.

Q. Where did you get the figures when you stated in your affidavit that you had received from $225 to $250 in cash for your land?

Mr. LIND.—The witness didn't testify that he so stated at any time.

(Testimony of Samuel D. Pickens.)

Mr. McCOURT.—It was in his affidavit over his signature.

Q. Now, you say the first time you ever heard of Kribs was down there at Wodtli's?

A. I think so. I don't know.

Q. Didn't you hear of Kribs before you ever filed at all, he and C. A. Smith coming into that country there, stopping at the Mealeys?

A. Not that I recollect anything about.

Q. What?

A. I don't recollect anything about it. I didn't pay much attention to it.

Q. Wasn't it commonly talked that C. A. Smith had been **[314]** in there, and that he was a rich man and could buy the whole of Linn County?

A. No, I didn't know anything about that.

Q. Didn't know anything about it. Now, this affidavit that you talk about here that Mealey had, he wrote it right out there in your presence, didn't he?

A. No, sir, he didn't.

Q. Sat right down there with a pen and wrote it?

A. No, sir, he didn't.

Q. Did he have it all ready when he got there?

A. It was all ready when he got there for me to sign it.

Mr. McCOURT.—I want to offer this affidavit showing it was in Mealey's handwriting and not made by Burns.

Mr. LIND.—That is admitted.

Mr. McCOURT.—Admitted that it is in Mr. Mealey's handwriting.

Mr. LIND.—It is admitted that it is in Mr. Mea-

(Testimony of Samuel D. Pickens.)
ley's handwriting.

Q. Now, nobody abused you when you were down here at Portland, did they? A. No, sir.

Q. You were ill, and they let you go right home, didn't they?

A. No, sir, we all went home—all went back. Only when I got sick, and I had to appear again—we had to be back here in 10 days—show up in 10 days.

Q. Weren't you sick when you went home?

A. No, I got sick after I got home. I was kind of sick when I left, but after I got home I got worse.

Q. And couldn't some back? **[315]**

A. No, sir; I couldn't come back. I got the fever.

Q. You were not in any way scared when you were making this affidavit before Mealey?

A. Well, I signed that. He said that would let us out—clear us up—something to that effect.

Q. Was Mealey scared?

A. Well, I kind of believe he was all right.

Q. You think he was scared?

A. I think he was scared—I think so.

Q. Wasn't he and all you people—when you got back up home you talked together there, and said, generally talked among you, that Kribs and these big fellows down here had bungled you out of your land, and you would just tell the truth and let them take the consequences?

A. No, I don't remember anything about that?

Q. You don't recall that? A. No, sir.

Q. Mealey was working for W. J. Burns when he

(Testimony of Samuel D. Pickens.)

went back up there, wasn't he?

A. I couldn't say.

Q. What? A. I couldn't say.

Q. (Mr. UELAND.) This witness doesn't know.

Mr. McCOURT.—No, the doesn't appear to know anything much.

Q. (Recross.) Now, at the time of this talk, when the special agent was there at Wodtli's, was there anything said about a location fee being figured in for the Mealeys in this mortgage? Do you remember anything about such talk?

A. Well, I don't know whether I do. I don't know as I do.

Witness excused. **[316]**

[Testimony of Sydney Scanland, for the Government.]

SYDNEY SCANLAND, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Scanland?

A. In the vicinity of Foster.

Q. What? A. In the vicinity of Foster.

Q. How long have you lived there?

A. Ten years ago this spring.

Q. What is your business? A. Laborer.

Q. Where did you live before you moved into the Sweet Home country?

A. Oh, I had lived down about ten miles this side of there for a couple of years, and then I have been

(Testimony of Sydney Scanland.)

off up in the part of the country known as Big Bottom, some 12 or 15 miles the other way.

Q. What sort of labor do you engage in?

A. Just most anything I can get to do.

Q. What is known as common laborer?

A. Known as common laborer.

Q. How long did you know the Mealey boys—Judd Mealey and W. R. Mealey—prior to 1900?

A. Why, I didn't know them at all until along in 1900.

Q. What were you doing there in the spring of 1900 after you moved into the Sweet Home country? Whom were you working for?

A. I was working for R. C. Watkins.

Q. What doing?

A. Why, general work. Sometimes I was making boards, **[317]** and helping build a barn, and working in his store, and hauling freight for him.

Q. Did you know John A. Thompson?

A. Yes, sir.

Q. What was Thompson's business at that time?

A. In the locating business.

Q. How long had you known him before that?

A. I got acquainted with him after I moved into the neighborhood there.

Q. Do you remember taking a timber claim in there shortly after you moved in? A. Yes.

Q. How long after you moved in was it that you took this timber claim?

A. About three months.

Q. Well, whom did you see before taking the timber claim in regard to taking it?

(Testimony of Sydney Scanland.)

A. I don't know—it was the common talk of the country there, if a man would take a timber claim he would make $50 or $100 out of it, probably; that there was parties from Brownsville and Crawfordsville had taken timber claims and realized that much out of it.

Q. Who was it understood that you could get the $50 from, or the $100?

Mr. LIND.—I object to that.

Q. Who was it said, in this common talk, that you could get this $50 or $100 from?

A. Oh, I don't remember now.

Q. Well, which of the Mealeys did you see?

A. Judd Mealey.

Q. Where did you go to see him?

A. I didn't go any place. He come along where I was at **[318]** work making boards, and I stopped him and asked him about it.

Q. What did he say?

A. Why, he said he would see, and let me know later on.

Q. Well, how later on did he let you know?

A. Oh, it was probably six weeks, maybe two months, I spoke to him again, and he says, "Yes, we have been up there in the mountains looking around, and found some timber land, and we can locate you."

Q. Well, what did you do then?

A. Well, we talked the matter over, and I told him I would take a claim if I could, if someone would advance the money to pay expenses, and I would give them a mortgage to secure them after the proof was made.

Q. Well, what did you do?

(Testimony of Sydney Scanland.)

A. I went in and looked at the timber claim, and then went to Roseburg and filed on it.

Q. Who was in the party when you went?

A. Went where?

Q. To Roseburg.

A. Oh. There was R. C. Watkins, Alexander Gould, Louis Maynard, and Will Rozell, John W. Lawrence, J. J. Gilliland.

Q. Malone? Was Keeney there? A. Yes.

Q. Jasper H. Keeney and his wife?

A. Jasper H. Keeney and his wife.

Q. Was old man Tuthill along?

A. I don't remember seeing him on that trip.

Q. Who paid your expenses on the trip?

A. Why, Mealeys, I presume they furnished the money to pay the expenses. **[319]**

Q. Did they give you the money to pay them with? A. No.

Q. Who paid your hotel bill, or did you have any?

A. Yes, we had a hotel bill. We eat while we was there.

Q. Well, when did you next hear of the claim, hear anything regarding it?

A. The next thing I seen was the advertisement in the paper—Brownsville paper, I think it was at the time.

Q. And what happened then?

A. I made note of the date when proof would be made, and we all went to Roseburg again.

Q. Whom did you go with?

A. I went with the same crowd I did before, about.

(Testimony of Sydney Scanland.)

Q. Who looked after you?

A. Why Mealeys furnished the teams.

Q. Who furnished the tickets?

A. They did.

Q. Well, when you got to Roseburg, what did you do?

A. Stood around town awhile till the Land Office opened up, and we went in and made our proof.

Q. Well, when you had got up to the Land Office, was Mealey there?

A. When we went to make proof, yes, sir.

Q. Which of the Mealey boys were there?

A. They were both there at that time.

Q. Both there? Thompson there?

A. Yes, sir.

Q. All the rest of these men you have mentioned there? A. Yes, sir.

Q. After you had made proof, what did you do?

A. Came down out of the Land Office, and was around on the street awhile, and they come to me and told me **[320]** there was a man there that would buy our claims.

Q. And who did they say the man was?

A. I don't remember now that they said at all who the man was.

Q. What did you do then after you heard that?

A. We went into the same attorney's office there and made out a deed.

Q. To whom?

A. Made out the deed to Frederick A. Kribs.

Q. Did you see Kribs there? A. No, sir.

Q. When did you first learn that you had made a

(Testimony of Sydney Scanland.)

deed to Frederick A. Kribs?

A. Right then. I read the deed over and saw his name on it, seen that I was transferring it to him.

Q. How much money did you get?

A. I got $50 above all expenses.

Q. You hadn't been at any expense?

A. They had paid the expenses for me. I had borrowed the money from them or had made arrangements they should pay the expenses, and I would secure them with a mortgage if I didn't sell.

Q. And you did sell right away?

A. Yes, I did sell right away.

Q. Before Mealey ever came up there to see you, it was commonly reported in the neighborhood that there would be $50 in the transaction, wasn't it?

A. No, there was nothing definite about it. It might be that much, and it might be more.

Q. How is that?

A. There might be that much, and there might be more. We had the privilege of holding the land if we wanted **[321]** to,—giving a mortgage and holding it. If we could raise the money to pay the mortgage we could hold the land indefinitely.

Q. How indefinitely did you hold yours?

A. I didn't hold it a great while.

Q. Two or three hours? A. Probably.

Q. Did you ever see the final certificate for the land? A. The patent?

Q. The paper that was issued the day you made proof.

A. Why, I think so. I think it was given to me.

(Testimony of Sydney Scanland.)

Q. Oh, you think it was. Did you pay any money there? A. No, sir.

Q. Was the money paid the day you were there?

A. Why, I presume it was.

Q. Did you see any paid?

A. No, I didn't see any paid.

Q. Don't you know it was not paid until a day or two later by Kribs?

A. No, I don't know it. **[322]**

Q. Didn't—Judd Mealey was there, wasn't he?

A. Yes, sir.

Q. And Will Mealey? A. Yes, sir.

Q. Didn't you hear Mealey tell, or rather nod his head to the Land Office man when it came time for you to make payment of the money?

A. Not that I know of; I don't remember of it.

Q. Didn't you notice him as each of you went up to the counter there, Mealey standing there and nodding his head to the Land Office officials inside of the counter? A. No, sir; I did not.

Q. You didn't see any money passed while you were there? A. No, sir.

Q. Did you give any money? A. I did not.

Q. Did you ever try to raise your money anywhere else? A. No.

Q. Did you ever inquire of Mealey how much he paid out for you?

A. No, I didn't inquire anything about what it was. I knew about what it was.

Q. Knew about what it was. About what was it?

A. I knew it was $400 to be paid, Register and Receiver's fees and our expenses. Kind of kept run

(Testimony of Sydney Scanland.)

of it in my head, going back and forward on those trips, and the location fee was all to be included.

Q. When you started to sell to Kribs how much did you agree to sell to him for?

A. I think it was $800.

Q. $800? A. I think so.

Q. And you knew your expenses were only about $450? **[323]**

A. Expenses was more than that.

Q. Well, how much more than that?

A. Well, I couldn't tell you just now.

Q. There was $400 for the land? A. Yes.

Q. There was two trips to Roseburg for you?

A. Yes.

Q. And a trip to the— A. Timber.

Q. To see the timber? A. Yes, sir.

Q. That would not be more than $100, would it?

A. No, I don't suppose it would, hardly.

Q. And you knew your deed said $850, which would be $350 coming to you?

A. Oh, what the price—the consideration—the number of dollars put in a deed don't have anything to do with the amount of money.

Q. You just said $850?

A. That was marked on the deed. You see deeds made for only a dollar—the consideration named in it, and several dollars' worth of property changes hands.

Q. Did they give any reason for putting $850 in it? A. No, sir.

Q. What? A. No, sir.

Q. How much were you selling your land for?

(Testimony of Sydney Scanland.)

A. I was getting $50 above all expenses.

Q. Yes, and you didn't find out what the expenses were? A. No, I didn't.

Q. And you didn't care? A. Didn't care.

Q. No. Didn't it seem strange that this man Kribs, strange man you never saw before—having you sign for $850 and paying you $50 for it only?

A. No, I didn't give it any particular thought.

[324]

Q. How many more of you got $50 there that day?

A. I don't know.

Q. You were down here in 1904, too—five, weren't you? A. Yes, sir.

Q. Do you remember talking to Mr. Burns about this transaction?

A. Yes, I remember getting cursed by Mr. Burns.

Q. Yes. Who were present? Who else was present when you were getting cursed?

A. Mr. Watkinds.

Q. Yes, and Mr. Wiley? A. Who?

Q. Charles Wiley?

A. I don't remember his being present—might have been. I don't think he was when we was getting the cursing.

Q. Well, you didn't tell any lies there, did you?

A. I don't think so.

Q. Well, I will ask you now if that is your signature there on that affidavit?

A. That affidavit don't cut much ice.

Q. Well, we will see whether it don't cut much ice now.

A. I didn't read it over at the time and I think

(Testimony of Sydney Scanland.)

Mr. Burns just fixed it up to suit himself.

Q. That is the affidavit, isn't it, that you signed?

A. I think so.

Q. I will ask you if you remember making this statement: "Sometime in 1900 we learned that the Mealey boys were locating people on timber claims" —this affidavit being signed by yourself, Richard Watkinds and Wiley—Charles Wiley—"and we asked them to locate us. They told us there would be $50 in it." Did you make that statement to Mr. Burns? A. Yes. **[325]**

Q. Did they tell you there would be $50 in it?

A. Said there might be $50 or might be more.

Q. Yes, and what were you going to do for the $50?

A. Why, file and make proof on a timber claim.

Q. And what were they going to get for the $50?

A. I don't know what they was going to get.

Q. What did you think they was going to get when you started into it? A. I didn't know.

Q. Didn't you know they were going to get the land? A. No, I didn't.

Q. What did you suppose they were putting you on that land for and paying you all your expenses and giving you $50?

A. Well, they was to get the location fees out of it.

Q. From whom?

A. The people we sold the land to.

Q. Who sold the land to who?

A. If I sold the land to anyone else, to Kribs

(Testimony of Sydney Scanland.)

or to anybody. They give me the privilege of selling the land.

Q. Were they talking about Kribs at that time?

A. No, I don't think the name was mentioned at all that I remember of, but I had the privilege of selling the land myself.

Q. Did you try to sell to anybody?

A. Not at that time.

Q. Did you ever see Mr. Kribs at the time you did sell it? A. No, sir.

Q. Who did you think he was?

A. I suppose he was a human being.

Q. Did you know where he was from?

A. No, sir.

Q. Who paid you the $50?

A. Judd Mealey. **[326]**

Q. That was the $50 you thought you were going to get all the time, wasn't it?

A. I presume it was. I didn't know but maybe I would get more.

Q. Did you try to get more?

A. I hadn't then. Didn't try to get more until after I had made proof and then they came on and I decided to take the $50 and not bother with it any more.

Q. Did you dicker with them about the $50?

A. No.

Q. Went right with the crowd to that office and signed the deed, didn't you? A. Yes, sir.

Q. And signed it right up without any question about it at all? A. Yes.

Q. And took your $50? A. Yes, sir.

Q. Were you paid right there in Roseburg?

(Testimony of Sydney Scanland.)

A. Paid in Roseburg.

Q. Now, then, do you remember about a year after that signing going up to Wodtli's house and signing another instrument? A. Yes.

Q. Who notified you to go there?

A. I don't remember now who did notify me.

Q. Who do you think it was?

A. I don't know who that was; I suppose some one come in and said a Special Agent was up there.

Q. What did he say the Special Agent had to do with you? A. (Witness shrugs.)

Q. You say you don't know what he had to do with you? **[327]** A. I don't remember now.

Q. When you got to Wodtli's house what time of day was it?

A. I think it was in the afternoon.

Q. Was anyone else there?

A. Why, there was quite a number around.

Q. Were they that same crowd of fellows who had gone to Roseburg with you?

A. Some of the same ones, not all of them.

Q. And some others, weren't there?

A. I don't remember now.

Q. All men living around in your community there? A. Neighbors around there.

Q. Was Judd and Will Mealey there?

A. Yes, sir.

Q. Was John Lawrence there?

A. I don't remember now whether he was or not.

Q. What conversation did you have with the Mealeys before you went into the room to give your affidavit?

(Testimony of Sydney Scanland.)

A. I don't remember that I had any.

Q. Well, you were all talking together there outside—you and the Mealey boys?

A. Usually a crowd of men together talk.

Q. And you were all talking about the matter of making those instruments?

A. Probably were.

Q. Yes, and what you would have to say when you got in there and what questions you would be asked?

A. Probably.

Q. And how you should answer?

A. I don't know about that. We got some of the information from Mr. Stratford—how we should answer questions.

Q. What did Mr. Stratford tell you? **[328]**

A. Well, he would ask the questions in a way that would imply the answers that he wanted.

Q. And you would just answer then that way? That is your signature there, is it?

A. That looks kind of familiar.

Q. Was Will Mealey in the room while Stratford was asking you questions?

A. I don't remember whether he was or not.

Q. What is your best recollection about that?

A. Well, I said I didn't remember whether he was or not. Now that is all—

Q. Might have been in there?

A. He might have been, and he might not.

Q. Did you get your inspiration from Mr. Stratford when he asked you this question: "How much, if anything, did you pay him for his services? A. $50." That is referring to being located by William

(Testimony of Sydney Scanland.)

Mealey? A. Yes, sir.

Q. Did Mr. Stratford answer that question for you?

A. Kind of implied it. He would ask a question and if a man was a little slow in answering, he would make a suggestion.

Q. He was the man that mentioned the $50?

A. I think he was.

Q. Well, now, I will ask you if he gave you inspiration about this: "How did it happen that you sold the land so soon after having made your final proof? A. A gentleman met me on the street and asked me if I had been making proof on a timber claim. I told him I had. He asked me if I would sell it and I told him providing I could make more out of it by selling it than handling the timber myself, and he offered me $850 for it, and thinking that was more than I **[329]** could realize out of it at the present time, I took him up at his offer." Did Stratford give you inspiration on that?

A. I think not.

Q. Who did?

A. I don't know. I could not say as to that.

Q. "Who was the gentleman you referred to? A. I could not say. I didn't ask the man his name." Did Stratford inspire that answer?

A. No.

Q. Who did? A. I answered that correct.

Q. It was. Now, you did meet a gentleman on the street?

A. I didn't ask him his name. The question was asked me who I sold to—deeded to—made out the

(Testimony of Sydney Scanland.)

papers or the transfer made to—transacted the business with. I remember his asking me that question and I told him I didn't know the man's name.

Q. You didn't know the man's name that wrote the deed? A. No.

Q. You never had a word with him about selling the timber land—timber claim, or anything else, did you? A. No, Mealey came to me.

Q. You were taken there by Mealey and the deed was already made for your signature when you got there?

A. I don't know whether it was already made or made after I got in there.

Q. Well, you had nothing to do with directing its making? A. No, I didn't draw it up.

Q. And that man had nothing to do with the timber land transaction at all, so far as his conversation is concerned?

A. I don't know about that. **[330]**

Q. Did you see Kribs there? A. No, sir.

Q. Who inspired this answer: "Who, if anyone, furnished you with the money or any part thereof with which you paid the Government for this land and the expenses incident to this entry? A. No one."

A. I don't remember.

Q. What is that? A. I don't remember.

Q. You remember answering that question?

A. No, I don't.

Q. How is it you can remember these others and can't remember that one?

A. A man can't quite remember everything.

(Testimony of Sydney Scanland.)

Q. Well, I will ask you if you remember this?

A. Yes.

Q. "Did you take the money with you to Roseburg to pay for this land when you went there? A. I did."

A. In one sense of the word, I did.

Q. How much money did you take to Roseburg there when you went down?

A. I didn't carry it in my own pocket, but I had made arrangements with others to pay the bills.

Q. And who did you make the arrangements with? A. The Mealey brothers.

Q. Did you mean to mislead the Government agent there when you answered that "I did"?

A. No.

Q. Did you have in mind the mental reservation that Mealey carried the money down there and that was you carrying it?

A. I don't quite understand your question.

Q. Did you have that mental reservation that you are talking about now—the idea in your head that really it was **[331]** you carrying it when Mealey carried it?

A. Why, yes. If I borrow money of a man it doesn't matter whether I carry it or not. If he is going to pay the bill for me—if I make arrangements for him to pay a bill for me it don't matter whether I carry the money or not. If I make arrangements with him and offer him security it is really my money—if I offer a man security and he agrees to furnish the money.

Q. Is it? A. The way I look at it.

(Testimony of Sydney Scanland.)

Q. If he carries it in his pocket that is the same as if you carry it in your pocket?

A. If he carries it and pays my bills and I have made arrangements to secure him, it is the same as my money.

Q. But it is you carrying—

A. I didn't particularly carry it.

Q. Well, you told the man you did?

A. Maybe I did.

Q. Well, you remember you did, don't you?

A. No, I don't remember it.

Q. "Was the money paid for the land paid you in cash or by check? A. Paid in cash." That is true, was it? A. Yes, sir.

Q. "How much cash was actually passed to you at the time the sale was consummated?"

A. $50.

Q. "$850." Who answered that, now? How did you happen to answer that?

A. I think Stratford kind of insinuated that some way or another.

Q. Isn't it a fact you got your instructions to answer that **[332]** from the same place you *are* getting instructions to answer questions right here now? A. No, sir.

Q. The same parties? A. No, sir.

Q. I say, isn't that a fact? A. No, sir.

Q. Didn't you?

Mr. UELAND.—This is not a reflection on the attorneys?

Mr. McCOURT.—No, I am not reflecting on the attorneys. I am getting back behind the attorneys.

(Testimony of Sydney Scanland.)

Q. Didn't you attempt to tell Mr. Rabb here two or three days ago that you got your money—or thought you would make arrangements to get your money from Sterling, Illinois, somewhere?

A. Yes, sir, I thought I would get the money there to pay off this mortgage.

Q. How is that?

A. I told him I thought I would get the money there to pay off the mortgage and hold the land.

Q. You did. When did you think that?

A. Just before we made proof there, and when I got down to Roseburg I changed my plan.

Q. The next time you talked with Mr. Rabb you forgot it was Sterling and told him it was Kertzner, Illinois.

A. I never told him any such name as that; beg your pardon. Mr. Rabb come to my place about a year ago and I told him I would not make any statement; didn't have to. If I made another statement it would be in court. He said I didn't have to make any statement. What I said would never be written down. He asked me questions and sometimes I gave him evasive answers and he would go ahead anyhow. He would ask questions and write. He got a lot of stuff wrote. **[333]** I don't know what he wrote. He didn't read it over and I never signed it.

Q. He didn't ask you to sign it?

A. I would not have if he did.

Q. Told you he would not let you sign any such statement, didn't he?

A. I don't remember that. He said it would never come up in court—the statement. What I said

(Testimony of Sydney Scanland.)

to him would never be brought up in court.

Q. What did he say, now?

A. He said it wouldn't be brought up in court.

Q. Didn't he come to see you for the very purpose, as he told you, of ascertaining what evidence the Government would be able to secure in this very case?

A. I don't remember now whether he did or not.

Q. And didn't you tell him that you just recently given Mr. Jamison authority to appear for you in this case—given him a power of attorney to appear for you in this case?

A. I don't remember telling him.

Q. Wasn't it this case that you were talking about right then and there? A. Might have been.

Cross-examination.

(Questions by Mr. LIND.)

Have you ever had any conversation with myself with regard to this claim or any other matter?

A. No, sir.

Q. We never had a word of conversation in our lives, have we? A. No, sir.

Q. Have you ever talked with my associate?

[334] A. No, sir.

Q. Judge Ueland—this gentleman to my left?

A. No, sir.

Q. Have you ever talked with Senator Gearin on the subject? A. No, sir.

Q. Did you ever have any conversation with any one of us three? A. No, sir.

Q. Has anyone on the part of the defense told you or asked you in regard to your testimony in this case?

A. No, sir.

(Testimony of Sydney Scanland.)

Q. Did you come under subpoena issued by the Government, served on you by a Government officer to testify now? A. Yes, sir.

Witness excused. **[335]**

[Proceedings Had April 28, 1910, 2 P. M.]

Portland, Oregon, April 28, 1910, 2 P. M.

Mr. McCOURT.—I don't know whether I have done so heretofore, but I wish to request of counsel that they furnish us, or let the defendant Kribs furnish us with the cancelled checks, evidencing payments made by him, to either O. J. Mealey or Will R. Mealey, or both of them, or to John A. Thompson.

Mr. LIND.—Between what dates?

Mr. McCOURT.—Between the 17th day of April, 1900, and the 1st day of November, 1902.

Mr. LIND.—Yes, you made that request, and I communicated it to Mr. Kribs.

Mr. McCOURT.—And also to any of the defendant entrymen mentioned in this suit, between those dates.

Mr. TANNER.—I will take it up with Mr. Kribs and see if he has got them.

Mr. McCOURT.—I have concluded, if the Court please, that that is all the witnesses we shall have at the present time, and ask the privilege of calling Mr. Puter later, and of taking of such depositions as the case may suggest after Mr. Puter's testimony is in, which we will agree upon with counsel, if there will be any. There may not be any depositions. It may be that Mr. Puter's evidence will not measure up to what I expect, and I may have to go to some other source to get the information I require.

Mr. UELAND.—Mr. District Attorney, would it

not be just as well to understand at this time whether, as to the testimony which shall not be taken in court on either side, it would not be better to take it orally before some examiner to be appointed by the Court instead of in the form of depositions? **[336]**

Mr. McCOURT.—I desire to take it orally. I meant the interrogatories to be propounded orally.

Mr. UELAND.—All right.

Mr. McCOURT.—That it be taken before an examiner rather than a mere deposition. I wish to be represented.

Mr. GEARIN.—Yes, both sides will.

Mr. TANNER.—Before the Court passes on those letters the Court has in reserve, I would like to submit some authorities.

COURT.—I made some examination during the noon recess and I am satisfied that the privilege extends to documents notwithstanding the fact that they were voluntarily delivered by the attorney to some third person. I think Mr. Wigmore lays down that rule.

Mr. TANNER.—There is an authority I have squarely on the point.

COURT.—Mr. Wigmore says that does not relieve the question of privilege at all. An attorney cannot voluntarily deliver a documentary communication from his client and thus make it competent testimony. But it does say if surreptitiously taken it may be competent. I do not understand the force of that rule, but that is what he states the rule to be. In this case it appears to have been voluntarily delivered.

Mr. McCOURT.—I am not prepared to say in this

case we got them surreptitiously. If Mr. Tanner will concede I got them that way, I will take advantage of it.

COURT.—That may be excluded from the record as testimony in the case then.

(The papers marked "Government's Exhibit 68" excluded from the record.)

Mr. McCOURT.—It is understood of course that when we get those bank statements from Roseburg we may put them in.

Mr. LIND.—Oh, yes, yes. **[337]**

I wish also the Stratford check offered in the other case. We may offer it in this case later when properly identified in that one.

Marked "Gov. Ex. 66" for identification. **[338]**

Mr. McCOURT.—We would like to be furnished with the correspondence between Mr. Smith and Mr. Kribs from April, 1900, following, relative to the entries in this case.

Also the original contract or a duplicate of it, between Mr. Kribs and Mr. Smith entered into about January, 1900, relative to the purchase of lands in Oregon.

Mr. UELAND.—We have been informed by our clients that they had no written contract between Mr. Smith and Mr. Kribs during that period, and relating to the lands in question here, and we have no such contract.

Mr. McCOURT.—Mr. Kribs testified in some case here that he did have a written contract.

Mr. LIND.—He did later on; not at the time. My recollection is it was about the 31st of December,

1900, that there was a written contract—sometime in December, 1900.

Mr. UELAND.—1901.

Mr. LIND.—My associate's recollection is better than mine on that point.

Mr. McCOURT.—There are some checks that I wish to call for. I will call for them generally as checks to O. J. and Judd Mealey or the Mealey brothers or either of them, or to John A. Thompson, from April 17, 1900, to and including December, 1902. All checks of Mr. Kribs to these parties during that time.

Now, then, will it be admitted without the necessity of my calling witnesses, that there were commencing in February, 1901, up to and after the issuance of patents, certain payments made to Pierce Mays or to the firm of Carey and Mays, and the firm of Mitchell and Tanner—sums of money aggregating $50 per claim to the firm of Carey and Mays, and Pierce Mays, and $25 per claim to Mitchell and Tanner upon the **[339]** land embraced in this case, for the purpose of facilitating the passage of the entries to patent.

Mr. LIND.—We will look into the matter and at two o'clock will be advised as to facts in regard to the matter, and if the facts are as you state, we will so agree subject, of course, to all objections as to competency and materiality.

Mr. McCOURT.—I want to include in these payments a payment of $100 or more to John Van Zant in connection with the Mitchell and Tanner payment.

Now, there is certificate from the Roseburg Bank being prepared. That will be used in this case.

Mr. LIND.—That will be admitted.

Recess taken until 2 P. M. **[340]**

Mr. McCOURT.—Have you the correspondence?

Mr. UELAND.—We have no correspondence.

Mr. McCOURT.—If the Court please, Mr. Tanner has furnished me correspondence from Mr. Kribs, the earliest date of which is December 31, 1902, with the statement that no prior correspondence can be found.

Mr. TANNER.—That is his information to me. I told him to get everything he had on the subject. That was what he furnished. He thinks previous letters have been mislaid, or destroyed, if there were any.

Mr. McCOURT.—Without putting any of this correspondence into the record, I think it may be stated that none of the correspondence mentioned refers to the lands in this case. There is some reference in one or two of the letters to Mr. Puter and possibly incidentally, one tract of land involved in case 3320 is mentioned. I should like to have the record show the letters were offered.

COURT.—Do you want them copied into the record?

Mr. GEARIN.—They are wholly immaterial.

Mr. McCOURT.—The only materiality they have is showing the frequency with which correspondence passed between the parties and the completeness with which they were advising each other of the transactions occurring between them.

Mr. UELAND.—I would suggest that counsel keep it and if he finds anything with any bearing upon this

case, that he introduce it.

Mr. McCOURT.—Very well; I will do that.

Now, the checks from Mr. Kribs to Mr. Mealey.

Mr. LIND.—I was unable to find Mr. Kribs during the noon recess.

Mr. McCOURT.—The Government offers to prove that in **[341]** the year 1901 prior to the issuance of patents in this case, Mr. Kribs entered into an agreement with the firm of Mitchell and Tanner to secure their services in expediting the lands in question to patent, together with other lands. And pursuant to that agreement Mr. Kribs, by his check of October 15, 1901, paid to Mitchell and Tanner $600 as a retainer in the matter mentioned, $100 of the sum to be used to cover the expenses of John Van Zant in assisting and procuring affidavits from entrymen. And later, on June 14, 1902, pursuant to arrangement with Mitchell and Tanner, Fred A. Kribs paid Mitchell and Tanner the sum of $1,000. Both of the checks mentioned being drawn upon the First National Bank of Roseburg. And also on the 14th day of February, 1902, Fred A. Kribs in connection with the same matter paid Mitchell and Tanner by check on the same bank the sum of $500. That other payments were made to Mitchell and Tanner in the same connection upon the Merchants' National Bank of Portland, Oregon.

Mr. TANNER.—Those don't relate to those lands alone. There are other transactions.

Mr. McCOURT.—They related to this and 3320 and possibly others, possibly the Pillsbury matter. In connection with the offer mentioned the Govern-

ment's counsel offers in evidence checks mentioned. This offer is made for the purpose of showing that the several payments were made out of the account of Fred A. Kribs in the First National Bank of Roseburg, Oregon, which was, up to the date of these checks, wholly made up of drafts and money furnished by C. A. Smith.

Mr. UELAND.—The defendants represented by us object to this offer on the grounds; first, that it is irrelevant, in that it does not tend to prove any of the charges of fraud **[342]** contained in the bill. And, second, that it is immaterial in that it does not tend to prove the fraud as a ground for cancelling the patents in question.

COURT.—I understand the charge in this case is that Smith was a party to the original conspiracy, and that the conspiracy was for the purpose of defrauding the United States out of these lands; therefore there has been evidence offered by the Government tending, or at least claiming, to show that state of facts, connecting Smith through his agent or representative, with the original entry of these lands, and with final proof, and in taking over the tract from the entrymen. Now, the title didn't pass from the Government until the patents were issued, and whatever was done by these people from the time of entry down to the time of the issuance of patent, I suppose would be competent for some purpose, provided they can be connected back to the original transaction. Of course, if Mr. Smith bought the land from the original entrymen in good faith and found some question about the title and then

employed attorneys to straighten the matter out, it would not be evidence that he was a party to the original conspiracy, but if there is other evidence tending to connect him with the original conspiracy, I suppose the Government is entitled to show it. At least that would be the ruling in an equity suit. That is, that the Government is entitled to the benefit of the record.

I shall, therefore, overrule the objection and let the testimony the Government offers come in.

Exception saved.

Mr. McCOURT.—I understand that counsel will admit the facts to be as I have stated. Therefore, it is in evidence subject to the objection which you made and you will make **[343]** no question as to the further identification of the checks.

Mr. UELAND.—Subject to the objection and the saving of the exception, the defendants will admit the facts to be as stated in the offer, save only that the payments were not made wholly concerning the obtaining of patents to the lands involved in this suit, but covered the subject matter of obtaining patents to other lands. The amount to be paid to the attorneys for obtaining patents in this suit being $25 for each claim.

Mr. McCOURT.—That is as I understood it, but Mr. Tanner corrected me and I did not want to make the statement.

Mr. TANNER.—My recollection of the agreements I had with Mr. Kribs at the time was that there was no agreement about so much a claim, but a retaining fee of $500 and $500 more when the patents issued.

There were other payments relating to lieu selections and other matters having no connection whatever.

COURT.—I suppose the important feature from the Government's standpoint is to show that Kribs was using Smith's money for purposes of this kind, and the amount used is not material.

Mr. UELAND.—I would like to have stricken out my statement of $25 a claim.

COURT.—It is not important. That may be stricken out.

Check of February 14, 1902, marked "Government's Exhibit 56."

Check of June 14, 1902, marked "Government's Exhibit 57."

Check of October 15, 1901, marked "Government's Exhibit 58."

Mr. McCOURT.—I further offer to show that Mr. Kribs on September 19, 1900, out of his bank account in the First **[344]** National Bank of Roseburg, the funds of which were furnished by the defendant C. A. Smith, paid to Joseph T. Bridges, Register of the U. S. Land Office at Roseburg, Oregon, the sum of $1500 by check dated September 19, 1900, in favor of Mr. Bridges and endorsed by him. I don't need to repeat that matter of checking up or periodical accounting.

Mr. LIND.—That is objected to as irrelevant, immaterial and not bearing upon any issue in this case.

COURT.—Do you claim that has reference to the lands involved in the present case?

Mr. McCOURT.—Well, I don't know. It was given before the proofs were made in over half of the entries in this case. * * *

COURT.—I don't understand just what connection this transaction can have with the case now under consideration without some evidence explaining it in some way.

Mr. McCOURT.—Well, if the Court please, I will withdraw the offer of that check, with the privilege of offering it later if I can offer some evidence along with it that will make it competent.

COURT.—Very well.

Mr. McCOURT.—It is agreed that the register of the Revere House at Albany shows that Fred A. Kribs, wife and two sons were registered at said hotel April 1, 1900, and on Monday, April 2, 1900, S. A. D. Puter registered at said hotel.

The register of said Revere House further shows registered there on Sunday, May 20, 1900, C. A. Smith, H. H. Davis, S. A. D. Puter, F. A. Kribs, all in the handwriting of Mr. Kribs. On said date said register further shows present at said hotel William R. Mealey of Foster, Oregon. **[345]** The register of the Revere House shows registered at said hotel Sunday, November 3, 1901, J. Van Zant, Portland—that he arrived and took lodging. Monday, November 4th, the register of said hotel shows registered at said hotel E. D. Stratford, Roseburg, Oregon—arrived at noon or near noon. On Saturday, November 9, 1901, the register of said Revere House shows registered there E. D. Stratford, Roseburg, Oregon, "S" (Supper). Assigned Room 29. O. J. Mealey, Foster, Oregon, supper—arrived at supper time; assigned room 28. J. Van Zant, Portland, arrived supper time, assigned Room 28.

It is agreed between counsel that the record of

registry at the McClallan House, Roseburg, as appearing in the case of U. S. vs. Nils O. Werner et al., No. 3320, may be considered as the record in this case as follows:

Extract from testimony of O. A. McClallan, in No. 3320, the witness having been requested to examine the register for the month of April, 1900.

"The first entry is on the 13th day of April. Mr. Kribs, wife and two children arrived to supper in the evening, left on the 21st day of April at breakfast.

"Q. (By Mr. McCOURT.) Read the entire entry.

"A. And McMullen supper, lodging and breakfast $1.50; total paid $36.60.

Q. I note in that same entry under the column "house" the designation "Mac" opposite the entry which you have just read.

A. They also have an annex at the hotel there and this is to show that he had room No. 1 in the main hotel, what is called the Mc House—the McClallan House. Some entries were made that way. Here is one, *Roo,* 44 in the Van **[346]** Houghton House. All the entries are not made that way, but some of them were at that time.

Q. The next entry.

A. On the 25th day of April he was there. Kribs and boy had Room 1. Phone ninety cents, fifty cents, $1.20, $.50, $.50, $.95. Laundry 90 cents. Left on the 30th day of April, after lodging. Forwarded $12.50—the bill was not paid at that time. The next entry is on the 28th day of April, Room 1, McClallan House. Kribs, Mrs. and boy. Arrived to supper.

Left on April 30th after lodging, total amount $5.00, forward.

The next entry is on the 1st of May, 1900, Room 1. McClallan House, Kribs and Fred. Forwarded $17.50; phone $5.45, drayage 50 cents, left the 22d day of May after supper. Total amount $112.90, marked paid.

That $112.90 also includes another entry here for the 1st day of May, 1900, Mrs. Kribs and Bud. Here is an entry on the 11th day of May, B. and K. Left, returned on the 14th day of May, phone 80 cents, laundry 35 and 30 cents. Left on the 22d day of May after supper; total amount paid $112.90. That entry, I would judge, means that they left at breakfast on the 11th day of May—Kribs left—"K," I notice it now, 11th day of May Kribs left. The next entry is on the 1st day of June. Occupied Room 1. F. A. Kribs arrived for lodging, left on the 4th day of June after supper. Total amount paid $4.50. On the 5th day of June, 1900, F. A. Kribs occupied Room 1. Came for lodging. One extra meal. Left on the 6th day of June; total amount paid $2. 7th day of July, 1900, F. A. Kribs and family Room 1, arrived for lodging. Express 70 cents, McMullen account. Laundry 25 cents. Davis and D., $11.00. Now, there are four or five accounts here right in a row. The accounts are transferred. Left on the 31st day of July after lodging. Total amount paid $159.15." **[347]**

Mr. McCOURT.—Register further shows on September 29, 1900, F. A. Kribs and family, Room 1. Left the 14th of November, 1900.

Mr. LIND.—The book of entry shows he paid for a room.

Mr. McCOURT.—The book entry is as follows: September 29, 1900, Room 1. F. A. Kribs and family. Left the 14th of November, 1900, after lunch, R. L. $11.45, forward. There is a charge to McMullen and "one" $3.55, laundry 55 cents; 14th of November, stamps 10 cents, food $11.45.

What I am trying to get at is to show that Mr. Kribs was there during the time these proofs were made.

Mr. LIND.—He will state it if you call him, and if you don't we probably will.

Mr. McCOURT.—The second line shows 10th of December charge, $34.40 forward. He registers that date. The next line shows the 9th of December —arrived the 9th. Room 1; F. A. Kribs and family, left the 31st of December, 1900, $80.00 paid. The room book does not show Mr. Kribs at the hotel after the latter date down to the 16th day of February, 1901, that being the last in the book.

Whereupon proceedings herein were adjourned until Thursday, April 28, 1910, at 10 A. M. **[348]**

[Proceedings Had April 28, 1910, 10 A. M.]

Portland, Oregon, Thursday, April 28, 1910, 10 A. M.

Mr. McCOURT.—I would like to have the record show that the Court may consider the original C. A. Smith deed, purporting to have been made June 4, 1900, together with the accompanying deeds in case U. S. vs. Nils O. Werner et al., No. 3320, in this case for the purpose of comparison and determining the fact when they were made.

COURT.—Is the land involved in this case described in these?

Mr. McCOURT.—In that deed; yes.

Deed C. A. Smith marked "Government's Exhibit 59."

Deed J. E. Holmberg and wife to Charles A. Smith, dated October 26, 1906, marked "Government's Exhibit 60."

Deed Charles J. Swanson and wife to Linn and Lane Timber Co., May 28, 1907, marked "Government's Exhibit 61."

Deed Charles L. Trabert and wife to C. A. Smith, October 23, 1906, marked "Government's Exhibit 62."

Deed B. F. Nelson and wife to C. A. Smith, August 10, 1907, marked "Government's Exhibit 63."

Deed J. A. Willd and wife to C. A. Smith, October 27, 1906, marked "Government's Exhibit 64."

Deed Nils O. Werner and wife to L. & L. T. Co., August 15, 1907, marked "Government's Exhibit 65."

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COURT.—So far as these letters are concerned (correspondence between Mr. Kribs and Mr. Tanner) I think you had better offer them and the Court will reserve the ruling.

Mr. McCOURT.—They can be marked as one exhibit at the present time.

Correspondence marked "Government's Exhibit 68."

Correspondence consists of letter of Oct. 27, 1901, Kribs to Tanner; telegram November 6, 1901, Kribs to Tanner; letter November 9, 1901, Kribs to Tanner; telegram December 18, 1901, Kribs to Tanner; letter

(Testimony of E. D. Cusick.)

January 31, 1902, Kribs to Tanner; letter November 20, 1901, Kribs to Tanner. **[350]**

[Testimony of E. D. Cusick, for the Government.]

E. D. CUSICK, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

You live at Albany, Mr. Cusick? A. I do.

Q. What is your business there?

A. Banking business.

Q. How long have you been in the banking business there?

A. In my present position since 1892.

Q. What is the name of the bank with which you are connected?

A. J. W. Cusick and Company, Bankers.

Q. What position do you occupy in the bank now?

A. Cashier.

Q. You say you have been cashier since 1892 or 1902? A. 1892.

Q. Do you know W. J. Mealey? A. I do.

Q. O. J. Mealey? A. I do.

Q. John A. Thompson? A. I so.

Q. I will ask you whether or not either one of those persons had any account in your bank at Albany in the years 1900, 1901, 1902 and 1903?

A. They did not.

Q. Did Fred A. Kribs have any account there?

A. He did not.

Q. Do you know where Foster and Sweet Home

(Testimony of E. D. Cusick.)

are? A. I do.

Q. How long have you lived in Linn County?

A. 34 years, I believe—no, 32 years, I think.

Q. State whether or not Albany is the usual and ordinary banking point for people living up about Foster and Sweet **[351]** Home if anybody up there has any banking business?

A. Well, it is divided with Lebanon.

Witness excused. **[352]**

[Testimony of O. A. Archibald, for the Government.]

O. A. ARCHIBALD, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Archibald?

A. Albany.

Q. In what business are you?

A. Banking business.

Q. What bank are you connected with in Albany? A. First National Bank.

Q. How long have you been connected with that bank?

A. Been in that bank about fifteen years.

Q. What capacity did you occupy in the bank in the years 1900, 1901, 1902 and 1903?

A. Assistant cashier.

Q. And now what place do you occupy?

A. Cashier.

(Testimony of O. A. Archibald.)

Q. Are you familiar with the books and accounts and records of that bank as far as the year 1900 and previous? A. Yes, sir.

Q. Are you the present custodian of those records? A. Yes, sir.

Q. Do you know O. J. Mealey, W. R. Mealey and John A. Thompson? A. Yes, sir.

Q. Do you know Frederick A. Kribs?

A. No, I don't know him.

Q. You don't know him.

A. Not personally, no.

Q. Has Mr. Kribs ever had an account in your bank? A. No, sir.

Q. Have you examined the books of your bank to ascertain **[353]** the condition of the accounts of O. J. Mealey, W. R. Mealey, John A. Thompson and the joint account of O. J. and W. R. Mealey?

A. Yes, sir, I have.

Q. Have you made a transcript of your books showing those accounts?

A. I have—their accounts after 1900. There is a transcript of their accounts and part of the original from 1900 to 1904.

COURT.—Please speak louder.

A. From 1900 to 1904, inclusive. The accounts opened in 1900, I think.

Q. These slips that are attached to the accounts, or rather, the accounts that I hold in my hand, are those the ones you made—the transcripts?

A. Those are the transcripts, yes, sir.

(Testimony of O. A. Archibald.)

Q. Those slips that are attached—what are they?

A. They are the deposit slips or tags made at the time the entry was—the time when the credit was given.

Q. They are originals?

A. They are originals, yes, sir. **[354]**

Q. I note, Mr. Archibald, that the account of O. J. Mealey was opened apparently on October 3, 1900. Had Mr. Mealey had any account there previously?

A. I think not, not a check account that I remember of. There was perhaps.

Q. What other account had he had there?

A. I think previous to that it was perhaps certificate of deposit that he had there.

Q. How many? More than one?

A. I think there were two.

Mr. LIND.—That was O. J. Mealey you spoke of now, was it?

A. Just let me refer to the original deposit slip—shows for which. Perhaps both of them had maybe, O. J. and W. R.

Q. It shows what?

A. If you will allow me to inspect that deposit slip, I can tell you. Now, the W. R. please, W. R. Mealey. O. J. had one certificate.

Q. Each one had a certificate?

A. Yes, sir.

Q. Prior to the date of this? A. Yes, sir.

Q. I don't know just the date of them, perhaps not more than one.

(Testimony of O. A. Archibald.)

Q. You have a record of your certificates?

A. It is in the office.

Q. I will have it here in a minute.

Mr. LIND.—If you want to show that, why don't you ask him? If you want to show anything about those certificates, how much they were and when they were deposited—

Mr. McCOURT.—The account itself shows. I am going to introduce the account. **[355]**

Q. I notice the account of O. J. Mealey was also opened on October 3, 1900. I will ask you whether or not he had a check account there previous to that date? A. I think not.

Q. Did he have any other account there previous to that date?

A. No. I don't think so excepting the certificate of deposit that you mentioned.

Q. I notice that the account of John A. Thompson was opened there on December 20, 1900. Did he have any account there previous to that date?

A. I think not. Possibly he might have had, but I don't think there was one previous to that.

Q. Well, have you examined your books to see?

A. I examined the records from the commencement of 1900.

Q. And didn't find any account prior to that time?

A. Found nothing, no. Didn't find any account.

Q. Did he have any certificate of deposit or other sort of account there, savings account or anything? A. I think not.

(Testimony of O. A. Archibald.)

Q. Prior to the time that he opened the account mentioned? A. No. No, sir.

Q. The account of O. J. Mealey and William R. Mealey, I notice opened in March 4, 1903. Did those gentlemen have any account there prior to that time, any joint account? A. No, sir.

Q. Is that a transcript of your bills receivable book which I hand you? A. Yes, sir.

Q. Does that contain a correct list of notes given your bank by the Mealey brothers? **[356]**

A. I think it does all of them. I don't think there was any of them skipped. We examined the record very carefully. We have the record here.

Q. By reference to your certificate register, can you tell when those certificates of deposit mentioned were issued to O. J. Mealey and W. R. Mealey respectively?

A. Yes, sir; I can. September 26, 1900.

Q. Give the amounts to each one of them.

A. No. 143,078 was for $840.67 to W. R. Mealey and was paid.

Mr. LIND.—Give that amount again.

A. $840.67. That certificate was paid 10/3/1900.

Mr. LIND.—What does that mean?

A. It means October 3, 1900. And No. 143,079, the following certificate was for $875.66 to O. J. Mealey. It was paid or cancelled in October 2, 1900.

COURT.—When was it issued?

A. Issued September 26, 1900—the date of issue.

Q. Now, Mr. Archibald, do you recall generally the source from which the moneys that went into

(Testimony of O. A. Archibald.)

the account of Mr. O. J. Mealey, the account of William R. Mealey and John A. Thompson, came?

Mr. LIND.—One moment. We do not object to any evidence that shows facts specifically, but this question is too broad. We object to it as utterly incompetent—do you recollect generally?

COURT.—If he knows the source from which these deposits came, he may state the fact.

Q. Yes. Well, do you know the source, Mr. Archibald? A. Which—those two deposits?

Q. Yes, and the balance of the account of Mr. Mealey and **[357]** Mr. Thompson?

A. The majority of them perhaps consisted at that time of checks on the First National Bank of Roseburg.

Q. Drawn by whom?

A. Drawn by Mr. Kribs.

Q. Frederick A. Kribs? A. Yes, sir.

Mr. LIND.—One moment. Are you speaking about the two certificates of deposit now, made in September?

A. I have no means of determining what they consisted of except by referring to the remittance register of that date, and we have not those remittance registers of that date, as far back as that. December, 1901, I think, is as far back as we have the remittance registers. They were wet in a fire that we had. The vault was overcrowded, and they have been destroyed, those have.

Q. Where did you clear Roseburg checks deposited at your bank at that time?

(Testimony of O. A. Archibald.)

A. At that time, through Ladd & Bush, I think mostly.

Q. Well, you just recalled that fact, did you not, a few minutes ago?

A. Well, after I investigated the register there and the remittance registers on Portland. At the time I was subpoenaed here, I was under the impression that we cleared them through Portland entirely, but since I remember they were cleared through Ladd and Bush of Salem, I think at that time. Possibly some might have been sent direct to Roseburg, there is a possibility. Where we was not very well acquainted with the drawer of the check, or the payee—something of that kind, we might have taken it for collection and forwarded it direct, at their request, to gain time or something of that kind. **[358]**

Mr. LIND.—I wish to state to the District Attorney we do now want to appear in an attitude of objecting to any of this. Now, if you claim any payments were made by Kribs to the Mealeys or Thompson, on account of these lands, we say yes there were. And if you will, as I suggested on yesterday submit to us a statement of the amounts and dates, and such, we will check it up and concede it. We do not wish to put the Government to the inconvenience of getting at things in a roundabout way, when they can be ascertained so readily. There is no issue on this.

Mr. McCOURT.—They cannot be ascertained readily unless we can find out what they are. We

(Testimony of O. A. Archibald.)

had to get this man here and the books to find out what they were. We brought the man here with his remittance books on Portland, because we were advised he cleared through Portland, so we could check the accounts from the Mealey account back into the Kribs account. I cannot tell what is a Kribs check until we get those remittance books, except by surmise. There are a number of these deposits which we trace a like amount or a substantially *a*like amount into Mr. Kribs' account. But unless you are prepared to say from our statement that they were the same checks, we could not do it without getting these books. That is the reason we are here. Now, we find the man has not brought us the remittance register of the right bank.

Mr. LIND.—Well, now, there is going to be no trouble about that.

Mr. McCOURT.—We are going to be able to furnish now, I think, after we get a statement from this witness, **[359]** in regard to the matter.

Q. Was your bank in 1900 charging any exchange on checks on outside banks that were deposited with you? A. Yes; some, yes.

Q. What amount usually?

A. On the coast points here it was usually five cents a hundred and an additional five cents perhaps for the fractional part of a hundred.

Q. And did you always make the charge?

A. Not when the checks didn't cost us anything, we did not charge the depositors. We only charged where we were charged.

(Testimony of O. A. Archibald.)

Mr. McCOURT.—I will state the purpose of that question is, some checks that were apparebtly drawn by Mr. Kribs, when deposited in this Mealey account, are twenty or forty or fifty cents off the amount, and this exchange matter will account for that.

A. As a rule, the original slip there would show if there was any exchange charged on a check, so you can check that from that.

Q. The deposit slip?

A. Yes, sir, the deposit slip.

Q. It also shows if the depositor took some money in cash at the time or some other check?

A. Yes, as a rule. I always make the tag that way. Some tellers have a different method of it. Some put it down just as short as possible.

Mr. McCOURT.—I offer in evidence these transcripts of the account, with the original.

Marked "Government's Exhibits 69, 70, 71, 72 and 73."

A. Mr. McCourt, there is a portion of that are the **[360]** original leaves from the ledgers. You better modify your offer there so we can obtain possession of those later on.

Mr. McCOURT.—All right. I will do that.

Mr. LIND.—Mr. McCourt, does that sheet belong —that bunch? A. No.

Mr. McCOURT.—This trsnacript of bills receivable showing notes given to the bank. For money they had to borrow.

Mr. LIND.—There is no objection to these except

(Testimony of O. A. Archibald.)

their bulk. We only object to them as irrelevant and immaterial.

COURT.—They may be admitted then subject to that objection.

Mr. McCOURT.—I note that in the accounts of J. A. Thompson and O. J. Mealey and William R. Mealey part of the exhibits which I am offering are the original sheets from the bank ledgers. I ask the privilege later on to substitute copies for those originals.

Cross-examination.

(Questions by Mr. LIND.)

Taking the account of J. A. Thompson, I observe that there appears to his credit an item of $940 on September 20, 1900, on the ledger account.

A. Yes, sir.

Q. Is that the same as the certificate of deposit or is that another, or is that an open account deposited?

A. That is an open account, I think. That is the credit with which the account was opened, wasn't it? **[361]**

Q. Yes. Oh, December 20th.

A. December 20th. That is the credit with which the account was opened.

Q. Then there are various deposits apparently, and also checks drawn against this account?

A. Yes, sir.

Q. Until there is a balance struck on July 11, 1901, when he appears to have checked out and closed the account.

(Testimony of O. A. Archibald.)

A. Checked out? Yes.

Q. That is a correct view of it?

A. I think so. All accounts are sometimes closed for awhile and then they reopen again later on.

Q. Then an account appears to have been opened again on October 29—the same year probably. Is that the same year?

A. This is where the account opened?

Q. Yes. A. October 25, 1901, you say?

Q. October 25. A. 1901?

Q. Yes.

A. Opened with a deposit of $200. There are no checks drawn against that until October 29; that is, the first check was cashed on that day.

Q. Then there is an account continued from October 25, 1901? A. Yes, sir.

Q. Until what time?

A. Let's see. Well, he checked the last check that closed the account again May 13, 1903. **[362]**

Q. 1903?

A. Let me see. Hold on. Yes. Yes, 1903, I think. Here the checks continue over here, you see, and the $50 check seems to close that account out.

Q. What date was it closed?

A. May 13. That is, at that time.

Q. May 13, 1903?

A. Yes. Then it was opened again. You see, we went into a different system of ledger on June 30, 1903, and he didn't open an account under that new system until July 6, at which time he deposited $79.90.

(Testimony of O. A. Archibald.)

Q. Then the account continues from July, 1903, until what date?

A. This original brings it down, well, you have the account here of 1907, at which time it was balanced. Mr. Thompson had made an overdraft of $105.08. He covered it on August 20. I think he has had an account since then, of course, but he didn't have that. It was not called for.

Q. A new account. I wanted to make these dates plain to laymen. During this period between November, between 1900 and 1904 and '05, was Thompson a borrower at your bank?

A. Yes, sir, sometimes. There is a list of them there.

COURT.—Speak a little louder.

A. Yes, there is a list of the amounts in which he was either a borrower or endorser.

Q. Referring to "Government's Exhibit 73," I will ask you whether this indicates that the Mealeys and Thompson were borrowers of your bank at the time and dates stated in that exhibit?

A. It does. **[363]**

Q. When amounts were borrowed by either or any of them, as indicated, were those amounts covered in to their credit account on the ledger?

A. I think usually they took credit for them. They had the privilege of taking the cash or a credit. As a rule, I think they credited them to their account —perhaps not always.

Q. Do you recall making those loans personally to any of them?

(Testimony of O. A. Archibald.)

A. I think Mr. Langdon, the President of the bank at that time, made the loans to them.

Q. Do you recall negotiating any of those loans to them or having any conversation with any of them as to the object for which that money was borrowed?

A. What is the last date on that page?

Q. The last date on this?

A. That is the date of the note.

Q. October 28, 1904.

A. To whom was it?

Q. A loan to Eli Ramer and J. A. Thompson.

A. How much?

Q. $300.

A. Possibly I negotiated that loan.

Q. Do you know what the loan was for—purported to be for?

Objected to as immaterial, and it would be a self-serving declaration.

Mr. LIND.—Not at all.

COURT.—I suppose they have a right to explain these exhibits.

Q. Which name is first there?

Q. I will place the exhibit in your hands, and now ask you. **[364]**

A. That was a loan to Mr. Ramer upon which Mr. Thompson was security.

Q. For Mr. Ramer?

A. Yes, that three hundred. And I think Mr. Ramer took the cash for it very likely. Yes.

Q. Now, have you any recollection of any of the other items?

A. Nothing only as the records show.

(Testimony of O. A. Archibald.)

Q. You had no conversation with either of the Mealeys or Thompson in respect to any other item than the one you have testified to?

A. Not that I remember of. I think Mr. Langdon negotiated most of those loans.

COURT.—Speak a little louder.

A. I think Mr. Langdon, the President of the bank negotiated the loans. Mr. Langdon negotiated the loans principally at that time.

Q. Do you recollect meeting the Mealey's and Thompson when they made the original deposits, when they first opened the account in your bank?

A. Yes. Yes, I think perhaps I received the deposits from them.

Q. Do you remember whether the Mealeys told you what those moneys were for?

A. No, sir. We didn't make a rule of asking customers.

Q. Well, I didn't ask you that. I simply wanted to find out.

A. No. They might have, but I have no recollection.

Q. Have you any recollection with regard to Thompson, whether he made any statement as to how the money was derived? [365] A. No, sir.

Q. Do you have any recollection in what form the deposit came, whether it was a check or a draft?

A. Usually a check.

(Testimony of O. A. Archibald.)

COURT.—Would the deposit slip show?

A. It shows a great many of them.

COURT.—Get the deposit slip then, and look at that.

A. Some of them, the first one. Do you wish the first one?

Q. The first one.

A. No, I couldn't say as to that.

Q. In Mr. Thompson's case?

A. I didn't make that entry.

Q. Who made that entry?

A. Mr. Irvin, second assistant.

Q. Nothing to indicate? A. That first one.

Q. Nothing to indicate whether it is cash or check?

A. No. This one I know what that is. That is an outside check, because we charged an exchange on it. There was thirty cents deducted.

Q. Now, referring to ledger account of William R. Mealey, the first item of deposit which appears to have been October 3, 1900, of $840.17, that is the proceeds—that is his certificate of deposit?

A. Yes, sir.

Q. Which he previously held? A. Yes, sir.

Q. And that is true in regard to O. J. Mealey also?

A. Yes, sir. Is there a deduction at the bottom on that tag? Something, for at that time we were

(Testimony of O. A. Archibald.)

using revenue stamps, and I think you will find one of them the certificates was for fifty cents more. He took fifty cents worth of revenue stamps—we had to **[366]** use revenue stamps on checks and deeds and all such things, as that, and the bank dispensed those.

Mr. UELAND.—What is meant by "C. D."?

A. C. D., certificate of deposit. It is a short abbreviation for certificate of deposit.

Redirect Examination.

Q. These transcripts showing the names in the second column, what do those names indicate?

A. Well, when a man drew a check, draws a check, and numbers it, we simply put the number down, and where the number was not distinct, or something of that kind, we wrote the name in.

COURT.—What name?

A. The name of the payee of the check. Now, we find some of them, Mr. Thompson's, the names are all in, I think, because he didn't number his checks.

Mr. LIND.—What was the last statement? I could not hear that.

A. I say Mr. Thompson's account, you will find the names of the payees of the check, the first payee, the name is inserted there. It is written on the ledger. But where a man numbered his checks, we kept his checks by number.

Q. Now, Mr. Archibald, when you go home, will you refer to your books there, your remittance books,

(Testimony of O. A. Archibald.)

upon Ladd & Bush, if you have them back as far as 1900, and run them down to, say, October, 1902, and send us a transcript or statement of the outside checks that made up the accounts of Mr. Thompson, O. J. Mealey and William R. Mealey?

A. I will try to, but I am pretty positive that there is no remittance books to go back of this first to Portland remittance book. **[367]**

Q. What was the reason for that? Explain that.

A. Well, I think it was in August, two years ago, the roof or the upper story of our bank building burned off entirely. And we have a double vault, and the upper vault is not steel-lined; it is brick and cement; and things that were stored in there drew dampness and were badly molded—papers that were stored back. We were crowded for vault room, and there were a great many of those books that were outside.

Mr. LIND.—You do not propose to charge that to the defendants?

Mr. McCOURT.—No, I wanted to explain the reason we might not be able to make that as definite as possible.

Q. Some of the records were destroyed—burned up?

A. Yes, sir. They were burned afterward. They were not burned there, but they were soaked with water.

Witness excused. **[368]**

[Proceedings Had May 4, 1910, 9:30 A. M.]

Portland, Oregon, May 4, 1910, 9:30 A. M.

Mr. McCOURT.—I wish to put in the record the statement of the bank account showing deposits and amounts of checks, the bank account mentioned being the account of Fred A. Kribs in the First National Bank of Roseburg, Oregon; also showing the drafts which made up the account, their dates and other material matters which are explained by the statement itself.

Mr. LIND.—There are also some references to Puter's bank account.

Mr. McCOURT.—I believe that is so. Also extracts from the account of J. H. Booth, Receiver, and showing the deposits and checks of S. A. D. Puter in the same bank, and J. H. Booth as Receiver, in the same bank. This may be considered in both cases because it covers in both cases.

Marked "Government's Exhibit 74." **[369]**

Mr. McCOURT.—Now, if the Court please, I will put in some documentary evidence. I will offer in evidence certified copy of deed of Sydney H. Scanland to Kribs for the lands involved in his entry, dated the 9th day of October, 1900.

Marked "Government's Exhibit 34."

Mr. McCOURT.—I also offer in evidence certified copy of deed of John J. Gilliland and wife to F. A. Kribs, covering the lands embraced in his entry, dated the 11th day of October, 1900.

Mr. UELAND.—Is he here?

Mr. McCOURT.—No, he is not.

Mr. UELAND.—Has he been in attendance at this term of court?

Mr. McCOURT.—I don't know where he is.

Marked "Government's Exhibit 35."

Mr. McCOURT.—I offer deed of Alexander Gould and wife covering the land embraced in his entry, dated the 11th day of October, 1900.

Marked "Government's Exhibit 36."

Mr. McCOURT.—I offer deed of Louis Maynard and wife to F. A. Kribs, covering the land embraced in his entry, dated the 11th day of October, 1900.

Marked "Government's Exhibit 37."

Mr. UELAND.—Is Maynard here in court?

Mr. McCOURT.—I don't know.

Mr. LIND.—Is he a witness in behalf of the Government?

Mr. McCOURT.—I understand he is in attendance.

I offer deed of James W. Rozell to F. A. Kribs covering the land embraced in his entry, dated the 9th day of October, 1900.

Marked "Government's Exhibit 38." **[370]**

Mr. LIND.—Is Rozell in attendance here in court as a witness?

Mr. McCOURT.—I understand so; at least he has been subpoenaed.

I offer deed of Joseph O. Mickalson and wife to Frederick A. Kribs, covering the lands embraced in

his entry dated the 28th day of August, 1900.

Marked "Government's Exhibit 39."

Mr. LIND.—Is he a witness in behalf of the Government?

Mr. McCOURT.—He has been subpoenaed.

Mr. LIND.—Is he in attendance?

Mr. McCOURT.—I think he is.

I offer deed of Richard C. Watkinds and wife to F. A. Kribs, covering the lands embraced in the Watkinds entry, dated the 18th day of October, 1900.

Marked "Government's Exhibit 40."

Mr. LIND.—Is he present in court under subpoena as a witness for the Government?

Mr. McCOURT.—I think so.

I also offer a mortgage of Mr. Mickalson purporting to secure a note for $600 and covering the lands embraced in that Mickalson entry.

Marked "Government's Exhibit 41"?

Mr. McCOURT.—I offer in evidence deed of Charles Wiley to Frederick A. Kribs, covering the land involved in Mr. Wiley's entry, bearing date August 27th, 1900.

Marked "Government's Exhibit 42."

Mr. LIND.—Is Mr. Wiley in court in attendance as a Government witness?

Mr. McCOURT.—I think he is here.

We offer in evidence the deed of Frederick A. Kribs and wife to Charles A. Smith covering a three-quarter interest in all the lands embraced in this suit.

dated the **[371]** 24th day of October, 1904, in the State of Minnesota, county of Hennepin.

Marked "Government's Exhibit 43."

Mr. McCOURT.—I offer in evidence deed of Frederick A. Kribs and wife to Charles J. Swenson for one-quarter undivided interest in all the lands in controversy. Deed executed the 28th day of December, 1904, in Multnomah County, Oregon.

Marked "Government's Exhibit 44."

Mr. McCOURT.—I offer certified copy of a deed of Charles J. Swenson and wife to the Linn and Lane Timber Company bearing date the 28th day of May, 1907, and bearing file date September 9, 1908.

Marked "Government's Exhibit 45."

Mr. McCOURT.—I offer certified copy of deed of C. A. Smith and wife to the Linn and Lane Timber Company purporting to be dated the 4th day of June, 1906, bearing file date September 9, 1908.

Marked "Government's Exhibit 46."

Mr. McCOURT.—Now, in connection with these deeds, if the Court please, I would like to have it understood that the testimony of Mr. Glavis, Mr. Cowgill, Mr. Curl and Mr. Froman in case No. 3320, may be incorporated into the records in this case as the testimony in it.

Mr. LIND.—Subject to the same objections that are made in the other case.

Mr. McCOURT.—It is understood and agreed that for the purpose of perfecting the record, all reports,

instructions and decisions of the General Land Office, or of the Department of the Interior relating to the entries involved in this suit, and which have been offered in evidence in case of the United States vs. Nils O. Werner et al., No. 3320, may be considered as offered and admitted as evidence **[372]** in this case subject to the objections made to them in the other case.

In accordance with which agreement of counsel, the following is taken from the record of the case of United States vs. Nils O. Werner et al., Circuit Court No. 3320, and made a part of this record.

Letter of the Commissioner of the General Land Office bearing date November 26, 1900, directing the investigation of these claims in contfoversy in this suit—directing E. D. Stratford to make the examination, marked "Government's Exhibit 47."

[Government's Exhibit No. 47.]

"In reply please refer to 1900–27963, 34263, 47747, 64733.

'P' W. D. H.

G. R. O.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 26, 1900.

Address only the
Commissioner of the General Land Office.

Mr. E. D. Stratford,
Special Agent G. L. O.,
Roseburg, Oregon.

Sir:

On February 24, 1900, your predecessor, Special Agent S. S. Mathers, reported that he had been informed by Mr. C. E. Moulton, of the Land Department of the Northern Pacific Railway Co., that large bodies of valuable land were being entered in Tp. 14 S., Rs. 2 and 3 E., in the Roseburg, Oregon, land district, at the instance of one Horace G. McKinley, of Wisconsin, who was acting in the interest of Stephen Puter of Portland, Oregon. He furnished a list of names of forty-one persons who had published notice of intention to purchase lands in said townships under the Timber and Stone Act. Subsequently criminal proceedings **[373]** were begun against McKinley on charges growing out of this matter. Many of those who had advertised to make final proof failed to appear at the date set, probably being deterred by the proceedings against McKinley.

The following entries were made, however, all in Tp. 14 S., R. 3 E.:

No. 8168, Stephen D. Puter, NW¼ Sec. 20,
" 8169, Ira A. Pilkington, SE¼ " 26
" 8170, Jno. L. Green, NW¼ " 35,
" 8171, Thos. Wilson, NW¼ " 28,
" 8172, Charles Barr, SW¼ " 35,
" 8173, Charles Burley, SE¼ " 35,
" 8174, Neal D. Dozier, SW¼ " 34,
" 8175, Basil H. Wagner, SW¼ " 28,
" 8176, Harry Saltmarth, NW¼ " 24,
" 8178, Edward Finley, NE¼ " 35,
" 8179, John J. Jaggy, SE¼ " 24,
" 8180, Jay S. Phillips, NE¼ " 34,
" 8181, Zebulon Smith, NW¼ " 34,
" 8182, Douglas Atkinson, SW¼ " 24,
" 8183, Sadie E. Puter, NE¼ " 20,
" 8184, Josephine Jacobs, SE¼ " 22,
" 8186, Elaine S. Jacobs, NW¼ " 22,
" 8231, Isaac R. Brum, SW¼ " 14,
" 8232, Benj. F. Kirk, NE¼ " 14,
" 8233, Geo. L. Thompson, NW¼ " 14,
No. 8234, Peter Buffington, SE¼ " 14, and
" 8243, Elaine Miller, NE¼ " 31; also
" 8177, Harry C. Barr, SE¼ Sec. 14, T. 14 S., R. 2 E.

You are directed to make a thorough and searching investigation of these entries, with the view of ascertaining, in particular, exactly what connection

McKinley and Puter had with them. You will search the county records for evidences of transfer and will use every means that may **[374]** suggest itself to secure evidence of the fraudulent character of these entries. You will consult with the District Attorney and secure such information as he may be able to give concerning the matter. Report the facts found in each case on form 4–480.

Very respectfully,

BINGER HERMANN,

O. G. Commissioner."

Mr. McCOURT.—I now offer in evidence the report or letter of E. D. Stratford, Special Agent of the General Land Office bearing date December 24th, 1900.

Mr. LIND.—There are certain pencil data here. They are not offered.

Mr. McCOURT.—No, we don't offer that—they seem to be made in the Land Office.

Mr. LIND.—Then you offer the entries described in the letter only so far as they are involved in the suit.

Mr. McCOURT.—Yes, at this time.

Marked "Government's Exhibit 48."

[Government's Exhibit No. 48.]

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.
Roseburg, Oregon, December 24, 1900.

Address only the
Commissioner of the General Land Office.

Hon. Commissioner General Land Office,
Washington, D. C.

Sir:—By your letter 'P' No. 1900–27963, 34263, 47747, 64733, Dated November 26th, 1900, you directed me to investigate and report on 23 timber land entries supposed to have been made at the instance of one Horace G. McKinley, acting **[375]** in the interest of Stephen Puter of Portland, Oregon. I now have the honor to recommend that the following named entries be held up and that patent do not issue for either of them until I have had an opportunity to make an investigation of the circumstances connected with their entry as the same parties are interested in them and they are each surrounded with the same suspicious circumstances as are those mentioned in your letter above refered to.

No. 8235,	John Harrison,	NW. NW. Sec. 29 Tp. 14 S. R. 4 E Lot 1 N. ½ NW. 30
" 8236,	Jennie Moulton,	E. ½ W. ½ " 32
" 8238,	James B. Cooley,	Lot 3 N. ½ SE. ¼ 31 NW. ¼ NW. ¼ 32
" 8239,	Jacob Stilwell,	Lot 1 N. ½ NE. ¼ 31 SW. ¼ SW. ¼ 29
" 8240,	Luella Beeman,	Lot 4 S. ½ SE. ¼ 31 NW. ¼ SW. ¼ 29
" 8241,	Henry B. Blakely,	Lot 3 N. ½ SE. ¼ 30 SW. ¼ SW. ¼ 29
" 8242,	Hugh Blakely,	Lot 4 S. ½ SE. ¼ 30.

No. 8244, Frank M. Burford,	SW. ¼ NW. ¼ Sec. 32, and Lot 2 & S. ½ NE. ¼ Sec. 31	Tp. 14 S. R. 4 E.
" 8416, Fred Wodtli,	SE. ¼	26 " " 2
" 8419, O. J. Mealey,	SW. ¼	" " " "
" 8422, John A. Thompson,	NE. ¼	" " " "
" 8440, Andrew Wiley,	SE. ¼	18 " " 3
" 8441, Oliver Erickson,	Lots 1, 2 & 3, SE. ¼ NW. ¼	12 2
" 8442, Wm. W. Billings.	W. ½ NE. ¼ NE. ¼ NE. ¼ Sec. 18 and NW. ¼ NW. ¼ Sec. 17,	Tp. 14 S. R. 3 W.
" 8443, Charles Wiley,	W. ½ NW. ¼ W. ½ SW. ¼	12. " "
" 8444, Samuel D. Pickens,	SW. ¼ SE. ¼ S. ½ SW. ¼. NW. ¼ SW. ¼ Sec.	11 " "
" 8445, Thomas Parker,	NE. ¼ SE. ¼ E. ½ NE. ¼ NW. ¼. NE. ¼ Sec.	11 " "

[376]

" 8446, Joseph O. Mickalson,	W. ½ NW. ¼	"
	W. ½ SW. ¼ Sec.	10 " "
" 8447, Joseph H. Stingrandt,	E. ½ E. ½	" " " "
" 8448, Geo. W. Pickins,	E. ½ E. ½	" 12 " "
" 8508, Alexander, Gould,	E. ½ NW. ¼ SW. — NW. ¼. SW. ¼ NE. ¼. Sec. 24.	Tp. 14 S. R. 4 W.
No. 8509, Sydney H. Scanland,	W. ½ NE. ¼ NE. ¼ NE. ¼. Sec. 28. NW. ¼ NW. ¼ Sec. 27,	Tp. 14 R. 4 E.
" 8511, John J. Gilliland,	NW. ¼	" 28 " " "
" 8512, Louis Maynard,	NE. ¼ SW. ¼. W. ½ SW. ¼. NW. ½ SE. ¼. Sec.	22 Tp. 14. "
" 8510, Richard F. Malone,	NW. ¼	" " " " "
" 8513, Cornelius N. Tuttle,	S. ½ SE. ¼. Lots 3 & 4,	18 " "
" 8516, William J. Lawrence,	E. ½ SW. ¼. S. ½ SE. ¼	20 " "
" 8517, James W. Rozell,	N. ½ SE. ¼ N. ½ SW. ¼ Sec.	28 14 4
" 8522, Richard C. Watkins,	W. ½ NE. ¼ SE. ¼ NE. ¼. NE. ¼ SE. ¼ Sec.	22 " "

Very respectfully,
E. D. STRATFORD,
Special Agent G. L. O."

ENDORSED:

21/586 11465 6

U. S. GENERAL LAND OFFICE,
Received Jan. 2, 1901.
DEPT. OF THE INTERIOR
Received
Apr.
28
932 1902 377
L. & R. Div. **[377]**

Special Agent,
E. D. Stratford,
Roseburg, Oregon.
Date Dec. 24th, 1900.

Subject:

Recommending that certain timber land entries herein named be suspended pending investigation.

Ack. Jany. 2, 1901.

Jany. 16/01 To Stratford, stating entries. Action suspended on entries &c. G. R. D.

Reference is had to letter "P" No. 1900, 34263, 27963, 47747, 64733, of Nov. 26th, 1900.

P— 3 OGDEN.

Mr. McCOURT.—I now offer in evidence the report of E. D. Stratford, Special Agent of the General Land Office to the Commissioner of the General Land Office, dated March 9, 1901.

Mr. LIND.—No objection.

Marked "Government's Exhibit 49."

[Government's Exhibit No. 49.]

"Roseburg, Oregon, March 9, 1901.

Hon. Commissioner,
General Land Office,
Washington, D. C.

Sir:—

I have the honor to submit the following report in obedience to instructions contained in your letter 'P,' 1900–27963, 34263, 47747, 64733, dated November 26th, 1900, directing me to investigate and report upon the following named timber land entries, in the Roseburg, Oregon, land district, viz:

No. 8168, Stephen D. Puter,	NW. ¼	Sec.	20,	Tp.	14 S.,	R. 3 E.
" 8169, Ira A. Pilkington,	SE. ¼	"	26	"	"	"
" 8170, Jno. L. Green,	NW. ¼	"	35	"	"	"
[378]						
" 8171, Thos. Wilson,	NW. ¼	"	28	"	"	"
" 8172, Charles Barr,	SW. ¼	"	35	"	"	"
" 8173, Charles Burley	SE. ¼	"	35	"	"	"
" 8174, Neal D. Dozier,	SW. ¼	"	34	"	"	"
" 8175, Basil H. Wagner,	SW. ¼	"	28	"	"	"
" 8176, Harry Saltmarth,	NW. ¼	"	24	"	"	"
No. 8178, Edward Finley,	NE. ¼	Sec.	35	Tp.	14 S.	R. 3 E.
" 8179, John J. Jaggy,	SE. ¼	"	24	"	"	"
" 8180, Jay S. Phillips,	NE. ¼	"	34	"	"	"
" 8181, Zebulon Smith,	NW. ¼	"	34	"	"	"
" 8182, Douglas Atkinson,	SW. ¼	"	24,	"	"	"
" 8183, Sadie E. Puter,	NE. ¼	"	20	"	"	"
" 8184, Josephine Jacobs,	SE. ¼	"	22	"	"	"
" 8186, Elaine S. Jacobs,	NW. ¼	"	22	"	"	"
" 8231, Isaac R. Brum,	SW. ¼	"	14	"	"	"
" 8232, Benj. F. Kirk,	NE. ¼	"	14	"	"	"

" 8233, Geo. L. Thompson,	NW. ¼	"	14	"	"	"
" 8234, Peter Buffington,	SE. ¼	"	14	"	"	"
" 8243, Elaine Miller,	NE. ¼	"	31	"	"	"
" 8177, Harry C. Barr,	SE. ¼	"	14	"	"	2

Acting on said instructions, I have made as thorough and searching investigation as was possible under the circumstances. I find that from the 19th day of January, 1900, to the 26th day of February, 1900, inclusive, there was filed in the Roseburg Land Office, 48, applications for timberlands under the act of June 3d, 1878, all of said lands being in Linn County, Oregon. On March 9th, 1900, one Thomas Cooper acting Land Agent of the Northere Pacific Railroad Company, filed an affidavit in said Roseburg Land Office, alleging that each of said filings was not made in good faith. That applicant does not intend to appropriate the land for his own exclusive use and benefit; that filing [379] is made for speculation; that there is an expressed or implied contract or agreement for the sale of the land; that applicant never examined any part of said land; and from personal examination does not know its condition.' Wherefore the said Thomas Cooper asked for a hearing on his said protest and that said entries be cancelled. Included in the entries protested were those named in your letter above refered to and hereinbefore mentioned and in addition thereto were included the following to wit:

Miss Mattie McDaniel,	SE. ¼,	Sec. 20,	Tp. 14 S.,	R. 3 E
Clarence Leswill,	NE. ¼	" 24	" 14	2
C. Frank Starr,	NE. ¼	" 28	" 14	3
W. J. Dinkard,	SE. ¼	" 28	" 14	3
Claude D. Lee,	NW. ¼	" 24	" 14	2
Charles F. Smith,	NE. ¼	" 32	" 14	3
Charles Brockett,	NW. ¼	" 32	" 14	3
Walker Boon,	SE. ¼	" 32	" 14	3
Jennie F. Whitney,	SW. ¼	" 32	" 14	3
Edmond L. Archambeau,	NE. ¼	" 33	" 14	3
Anthony T. Thompson,	NW. ¼	" 30	" 14	3
Enos Come,	SE. ¼	" 30	" 14	3
E. C. Brandeberry,	SE. ¼	" 33	" 14	3
C. I. Barr,	SW. ¼	" 33	" 14	3
Charles Farrell,	NW. ¼	" 33	" 14	3
Vicie A. Lunn,	NE. ¼	" 22	" 14	3
H. George Meyer,	SW. ¼	" 22	" 14	3
Carrie L. Mayer,	NE. ¼	" 30	" 14	3
John Pilkington,	NE. ¼,	Sec. 26,	Tp. 14 S.,	R. 3 E
Lee Minard,	SW. ¼	" 26	" 14	3
James H. Doty,	NW. ¼	" 26	" 14	3
Robert S. Henderson,	NE. ¼	" 24	" 14	3
Benj. I. Snyder,	SE. ¼	" 24	" 14	3

[380]

Those persons whose names appear in the last-above mentioned list, failed to appear on the day set for their proof and their entries were cancelled, and the land was afterwards entered by the Northern Pacific Railroad Company. I am unable to find any evidence which in any manner connects either Horace G. McKinley or Stephen Puter with these entries in any manner, except that they perhaps received from each of the entrymen a fee for locating them on the land, showing them the corners and estimating the timber. I find by the records of Linn County, Oregon, that each of the tracts mentioned in your letter, and which I was instructed to

investigate, has been transferred by deed to one John A. Willd of Minn. the consideration mentioned in each deed being the sum of $1.00. So far as I can learn the said John A. Willd has had no connection in any way with said land or any part thereof, until after it was proved up on. I think that the said McKinley and Puter received a commission on the transfer of the land from the entrymen to Willd. I have made diligent inquiry and have made my investigation as thorough and searching as *I* has been possible to make it under the circumstances. It will be re*mb*ered that almost a year had elapsed since this land was entered, when the matter was placed in my hands. I have used every possible means which has suggested itself to me, to get at the facts, and I have to report that I am unable to find any tangible or competent evidence of fraud in connection with these entries or any one of them. I have found the entrymen and their witnesses, when I have been able to find them, very loth to give me any information in regard to the entries. It will be re*mb*ered that these persons have been interviewed, investigated and cross-examined, **[381]** by Special Agents Mathers and Loomis, as well as by numerous agents and attorneys of the Northern Pacific Company. They have also been in the hands of the U. S. Attorney's office, and a number of them have been in court as witnesses in a criminal case against McKinley. They have been advised by their attorneys to keep their mouths shut and they follow this advise strictly. I have consulted frequently and fully with Hon. John

Hall, U. S. Attorney and his deputy Mr. E. Mays, as well as with Hon. F. P. Mays, attorney for the Northern Pacific Company, who had charge of the contests above mentioned, for the said Company, and all of them have informed me that they knew of no evidence of fraud connected with the entries in question, or either of them, sufficient to sustain a contest and that in their opinion a contest would entail needless expense. Mr. F. P. Mays the attorney for the Northern Pacific Company who conducted the proceedings on the part of the company which resulted in the cancellation of the 23 entries herein refered to, informed me that his company had used every possible effort to discover grounds for further contesting those entries which were not cancelled, being the ones refered to in your letter above mentioned, and that in his opinion every entry was cancelled which was fraudulent or at least which could be proved to have been fraudulent, and that he thought that the Company had "bluffed" off a number of the entrymen, who might have prooved up on their land, had they not been scared out. While it may be claimed that the fact that all this land was conveyed shortly after it was entered, to one person, is evidence of fraud, yet the fact remains that each contest, if contests should be instituted, [382] would be conducted indipendently of all the others, and evidence of fraud in one case could not be used as evidence in another case. When it is considered that three Special Agents, including myself, the agents and attorneys of the Northern Pacific Company, who were anxious to have said entries cancelled, in order that the Company which

they represented might acquire the land, and the U. S. Attorney's office, have all had these entries under investigation at different times, and that in no instance has fraud sufficient to justify a contest been discovered, it would appear to be useless to contest the entries further.

I therefore recommend that said entries and each of them be sustained and that patents issue for the land.

Very respectfully,

E. D. STRATFORD,

Special Agent G. L. O."

ENDORSED:

21/588 11 41671

U. S. GENERAL LAND OFFICE.

RECEIVED MAR. 16, 1901.

REPORT OF

E. D. STRATFORD,

Special Agent G. L. O.

DEPARTMENT OF THE INTERIOR.

Received April 28, 1902.

L. & R. Div.

932 ROSEBURG, OREGON,

March 9, 1901.

In the case of Timber entries, Entry No. 8168 and others. **[383]**

L. O. Roseburg, Oregon.

Name, Stephen D. Puter and 22 others.

Tract ———.

Lands in Tp. 14 S. R. 3 E.

No. of Report ———.

Date of office letter directing the investigation

Nov. 26th, 1900.

Reference is had to letter "P," 1900–27963, 34263, 47747 & 64733.

Ack. March 16, 1901.

April 15, 1901, to Agt. Stratford for new reports.

G. R. O.

3 P OGDEN.

Mr. McCOURT.—I now offer in evidence report of Special Agent E. D. Stratford to the Commissioner of the General Land Office, bearing date March 9, 1901.

Marked "Government's Exhibit 50."

[Government's Exhibit No. 50.]

"DEPARTMENT OF THE INTERIOR.

General Land Office.

Washington, D. C.

Address only the
Commissioner of the
General Land Office.

Roseburg, Oregon, March 9, 1901.

Hon. Commissioner,
General Land Office,
Washington, D. C.

Sir:

I have the honor to submit the following report: By my letter of December 7th, 1900, I recommended that a list of 29 Timber land Entries, situated in the Roseburg, Oregon, Land District, be suspended un-

til I could make an **[384]** investigation of alleged frauds in connection therewith.

The entries were as follows:

No. 8235.	John Harrison	NW. ¼ NW. ¼ 29, Lot 1 N. ½ NW. ¼ 30, Tp 14 S. R. 4 E.
" 8236.	Jennie Moulton	N. ½ W. ½ Sec. 32, Tp. 14 S. R. 4 E.
" 8238.	James B. Cooley	Lot. 3 & N. ½ SE. ¼ Sec. 31 Tp. 14 S. R. 4 E.
" 8239.	Jacob Stilwell	NW. ¼ NW. ¼ Sec. 32, Lot. 1 & N. ½ NE. ¼ Sec. 31, Tp. 14 S. R. 4 E.
" 8240.	Luella Beeman	SW. ¼ SW. ¼ Sec. 29, Lot 4 S. ½ SE. ¼ Sec. 31, Tp. 14 S. R. 4 E.
No. 8241.	Henry B. Blakely	NW. ¼ SW. ¼ Sec. 29, Tp. 14 S. R. 4 E., Lot 3, N. ½ SE. ¼ Sec. 30, Tp. 14 S. R. 4 E.
" 8242.	Hugh Blakely	SW. ¼ SW. ¼, Sec. 29, Lot. 4, S. ½ SE. ¼ Sec. 30, Tp. 14 S. R. 4 E.
" 8244.	Frank M. Burford	SW. ¼ NW. ¼ Sec. 32, Lot 2, S. ½ NE. ¼ Sec. 31, Tp. 14 S. R. 4 E.
" 8416.	Fred Wodtli	SE. ¼ Sec. 26, Tp. 14 S. R. 2 E.
" 8419.	O. J. Mealey	SW. ¼ Sec. 26, Tp. 14 S. R. 2 E.
" 8422.	John A. Thompson	NE. ¼ Sec. 26, Tp. 14 S. R. 2 E.
" 8440.	Andrew Wiley	SE. ¼ Sec. 18, Tp. 14 S. R. 3 E.
" 8441.	Olive Erickson	Lots 1, 2 & 3, SE. ¼ NW. ¼ Sec. 12, Tp. 14 S. R. 2 E.
" 8442.	Wm. W. Billings	NW. ¼ NW. ¼ Sec. 17, W. ½ NE. ¼ NE. ¼ NE. ¼ Sec. 18, Tp. 14 S. R. 3 E.
" 8443.	Charles Wiley	W. ½ NW. ¼ W. ½ SW. ¼, Sec. 12, Tp. 14 S. R. 3 E.
" 8444.	Samuel D. Pickens	SW. ¼, SE. ¼, S. ½ SW. ¼, NW. ¼ SW. ¼ Sec. 11, Tp. 14, S. R. 3 E.
" 8445.	Thomas Parker	NE. ¼ SE. ¼ E. ½ NE. ¼, NW. ¼ NE. ¼ Sec. 11, Tp. 14 S. R. 3 E.
" 8446.	Joseph O. Mickalson	W. ½ NW. ¼, W. ½ SW. ¼, Sec. 10, Tp. 14 S. R. 3 E.
" 8447.	Joseph H. Stingrandt	E. ½ of E. ½, Sec. 10, Tp. 14 S. R. 3 E.
" 8448,	Geo. W. Pickens,	E. ½ of W. ½, Sec. 10, Tp. 14 S. R. 3 E.
" 8508.	Alexander Gould	E. ½, NW. ¼, SW. ¼, NW. ¼, SW. ¼, NE. ¼ Sec. 24, Tp. 14 S. R. 4 E.

[385]

" 8509.	Sydney H. Scanland	NW. ¼, NW. ¼, Sec. 27, W. ½ NE. ¼, NE. ¼, NE. ¼, Sec. 28, Tp. 24 S. R. 4 E.
" 8511.	John J. Gilliland	NW. ¼, Sec. 28, Tp. 14 S. R. 4 E.
" 8512.	Louis Maynard	N. ½, SW. ¼, W. ½, SW. ¼, NW. ¼, SE. ¼ Sec. 22, Tp. 14 S. R. 4 E.

8510.	Richard F. Malone	NW. ¼, Sec. 22, Tp. 14 S. R. 4 E.
8513.	Cornelius N. Tuttle	S. ½, SE. ¼, Lots 3 & 4, Sec. 18, Tp. 14 S. R. 4 E.
8516.	William J. Lawrence	E. ½, SW. ¼, S. ½, SE. ¼, Sec. 20, Tp. 14 S. R. 4 E.
8517	James W. Rozell.	N. ½, SE. ¼, N. ½, SW. ¼, Sec. 28, Tp. 14 S. R. 4 E.
8522	Richard C. Watkins.	W. ½, NE. ¼, SE. ¼, NE. ¼, NE. ¼, SE. ¼, Sec. 22, Tp. 14 S. R. 4 E.

The charges of fraud in connection with these entries, were made by certain newspapers published in the County in which the land is situated, and I believed them serious enough to justify the suspension of said entries until I could make at least a preliminary investigation. I have now to report that I have made sufficient investigation to convince me that said charges were made without any foundation or knowledge on the part of the parties making them, and that the intention of the parties who charged fraud was more for the purpose of bringing discredit on the administration of the Land Department than that the rights and interests of the Government should be protected.

As I have not been able to find any tangible evidence of fraud having been committed in connection with said entries or any one of them, I hereby recommend that said entries be relieved from suspension and that patents issue in each case in due course.

Very respectfully,

E. D. STRATFORD,

Special Agent."

[386]

ENDORSED:

21/588 10 41670

United States Land Office,
Received Mar. 16, 1901.
Department of the Interior.
Received Apr. 28, 1902.
932
L. & R. R. Div.
Special Agent,
E. D. Stratford,
Roseburg, Oregon,
Date March 9th,
1901.
Subject:

Refers to 29 Timber Entries suspended by Special Agent's letter of Dec. 7, 1900, recommending that said entries by relieved of suspension, and that Patents issue.

April 15, 1901—To Agt. Stratford for new reports, G. R. O.

Reference is had to letter recommending suspension of December 7th, 1900.

Ack. Mch. 16, 1901.

P— 3 OGDEN.

[387]

Mr. McCOURT.—I now offer in evidence copy of instructions to Special Agent E. D. Stratford by the Commissioner of the General Land Office bearing date April 15, 1901, the same being in answer to the two reports of March 9, 1901.

Mr. LIN*D*.—No objection.

Marked "Government's Exhibit 51."

[Government's Exhibit No. 51.]

"In reply please refer to 1901–41670. WDH. G. F. P.
'P'
G. R. O.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

Washington, D. C., April 15, 1901.

Address only the Commissioner
of the General Land Office.

E. D. Stratford,
Special Agent G. L. O.,
Roseburg, Oregon.

Sir:

I have a report from you dated March 9, 1901, relative to the 23 timber and stone entries in Tp. 14 S., R. 3 E., in the Roseburg, Oregon, land district, which you were directed to investigate by office letter of November 26, 1900. Also your report of the same date relative to 29 other timber and stone entries in Tp. 14 S., R's 2, 3, and 4 E. which were referred to you for investigation on January 16, 1901.

These investigations were ordered upon charges made by representatives of the Northern Pacific Railway Company, who stated that they had reason to believe that all of said entries were being made for speculative purposes under the supervision and management of one Stephen D. Puter, of Portland, Oregon, and Horace G. McKinley of Brownsville, Oregon. **[388]**

You state in these reports that you are unable to find any evidence which connects either McKinley or

Puter with the transaction, except that they perhaps received a fee from each of the entrymen for locating them on the land, showing them the corners and estimating the timber; that each of the tracts embraced in the entries was conveyed to one John A. Willd of Minnesota, soon after final proof was made, but that you were unable to learn that he had any connection with any of the land until he purchased the tracts, and that after making diligent inquiry and as thorough and searching investigation as possible under the circumstances, you are unable to find any tangible or competent evidence of fraud in connection with any of said entries. You say also that you have found the entrymen and their witnesses very loath to give you any information on the subject, and that you had consulted with the United States Attorney and his assistant, and with the attorney for the Northern Pacific Railway Company who had charge of contests brought by said company against some of the entries, and they were all of the opinion that no evidence of fraud in said entries could be secured sufficient to sustain a contest. In view of all the circumstances, you recommend that patents issue on the entries.

Before Special Agent Mathers turned over his work in Oregon to you he had made a partial investigation of these cases, and he reported having interviewed several parties with reference to the matter, among whom were Rufus Brum, Jennings F. Whitney and William J. Drinkard. These men filed applications to enter tracts in T. 14 S. R. 3 E., under the Timber and Stone Act, at the time [389]

when the applications were filed on which the entries in question are based, but they did not appear to make final proof at the time advertised.

They stated to Mr. Mathers before the date set for final proof that McKinley had induced them to make the applications, promising to pay all expenses, and after entry was made, either to buy the land himself or to find a purchaser for it, so that the entrymen would make $40.00 or $50.00 apiece, and perhaps more, from the transaction. Shortly after these conversations McKinley was arrested at the instance of Mr. Mathers for fraud in connection with this matter, and it seems that this fact deterred these parties and a number of others from completing their entries. The entries that were made, however, in said township, were apparently all made under the same circumstances as were contemplated in these three cases. That is, the parties were induced by McKinley or Puter to make the entries, with the understanding, in each case, that the land should be sold as soon as title had been obtained thereto. In other words, the entries were made purely for speculative purposes, and not in good faith to appropriate the land to the entryman's own exclusive use and benefit.

Under the circumstances this office is not willing to pass these entries to patent until it has more conclusive evidence than has yet been shown as to the impossibility of proving their fraudulent character. Your report merely makes the general statement that you have 'made diligent inquiry, etc., and had found the entrymen and their witnesses very loath to give

any information on the subject.' It does not show of whom [390] you made inquiries, nor what information was given you with relation to the matter, nor is it stated what reasons were alleged by the entrymen and their witnesses for not making a statement to you. Their refusal to do so is itself a strong indication of fraud.

You are directed to make a thorough re-investigation of this matter, and to make detailed reports showing just what efforts you have made to ascertain the facts, and exactly what information you have been able to secure.

You will call upon each of the entrymen for an affidavit, showing all the circumstances connected with his entry, at whose suggestion the entry was made, who furnished the money to pay for the same and on what conditions, what understanding he had with the party furnishing the money or with other parties, as to the use he should make of the land or the timber after he had perfected title, when he examined the land, and what means he used to identify it, etc.

You will also report the exact date when the land was sold in each case, the consideration for the transfer, the name of the transferee and the character of the instrument conveying the land. If the entrymen mortgaged the land you should state the facts concerning the mortgage shown by the county records.

In connection with these matters your attention is called to the cases of U. S. vs. Bailey et al. (17 L. D., 468), and U. S. vs. Searles et al. (19 L. D., 258),

which show the construction placed by the Department upon the provisions of the Timber and Stone Act requiring that entries of this kind shall be made only for the exclusive use and benefit of the entrymen. **[391]**

In making investigations of alleged frauds in connection with the entry of public lands, you will bear in mind that, as an agent of this office, you have a right to call upon entrymen for a full statement of the circumstances connected with their entries. In interviewing these parties you will inform them of this fact, and that their refusal to reply to your questions will be considered an indication that the entries were not made in good faith.

Very respectfully,

BINGER HERMANN,

Commissioner."

Mr. McCOURT.—I now offer in evidence for the purpose of perfecting the record of these entries, a letter of E. D. Stratford, Special Agent of the General Land Office, to the Honorable Commissioner, dated December 28, 1901.

Mr. LIND.—No objection.

Marked "Government's Exhibit 52."

[Government's Exhibit No. 52.]

"DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.
Roseburg, Oregon, December 28th, 1901.

Honorable Commissioner,
General Land Office,
Washington, D. C.

Sir:—

If the interests of the service will permit, I would be very greatly pleased if a transfer could be arranged which will assign me to some district east of the Rocky Mountains, for a time at least. **[392]**

My reasons for this request are as follows:

I now have under investigation at least 100 Timber and Stone entries, which are alleged to be fraudulent, and others are being continually added to the list. I have gathered quite a large amount of testimony which being in writing could be used by any one succeeding me equally as well as by me. A great many of these cases are practically ready to report to your office. About 75 of these cases relate to land which has been sold to Mr. Frederick A. Kribs a wealthy timber land speculator, or parties whom he represents, and many of them no doubt should be recommended for cancellation. Mr. Kribs has employed to look after his interest in these cases, Mr. A. M. Crawford, an attorney residing at Roseburg, a personal friend and next-door neighbor for a number of years, Hon. F. P. Mays, State Senator, of Portland, Oregon, and now I am in receipt

of a letter from Judge A. H. Tanner, of the firm of Mitchell & Tanner, attorneys at Portland, the Senior member of the firm being Hon. John Mitchell, U. S. Senator, from Oregon, stating that his firm is also employed by Mr. Kribs and inquiring in regard to the status of the cases. Many of these entrymen are personal friends and neighbors of mine. While the above named Attorneys are gentlemen of high standing, who would not attempt to exercise any improper influence in the cases, yet I think that it can be readily seen that my request is a reasonable one, under the circumstances, and that it should not reflect against my official standing or integrity. If I should remain in charge of these cases, I shall certainly try to do my duty, without fear or favor, but I earnestly hope that an exchange can be arranged which will bring to this field a man of ability and experience, who is entirely [393] free from the influences I have mentioned. I am of the opinion that the work in my hands is in such a condition that it can be taken up by any other experienced man with but little delay and without injury to the service. The importance of these cases will be understood when it is remembered that the party or parties, now holding deeds to these lands from the original entrymen, have invested at least $100,000 in the land, and are prepared to spend a large amount to defend their titles. I would prefer, if it can be arranged to go to Oklahoma, Colorado, or New Mexico, as my boys are in school in Kansas, and I would be glad to be so located, that I could visit them and my

wife who is with them, without consuming all of a 30 days' leave, in one trip, but if this cannot be arranged, I would prefer to go anywhere, under the circumstances.

Very respectfully,
E. D. STRATFORD,
Special Agent G. L. O."

ENDORSED:

23/395.

U. S. GENERAL LAND OFFICE,
RECEIVED JAN. 6, 1902.
3321.
E. D. STRATFORD,
Special Agent, G. L. O.
Roseburg, Oregon.
Date Dec. 28, 1901.

SUBJECT.

Asking for a transfer to some other district for reasons herein stated.

Ansd. February 10, 1902, G. R. O.
Ack. Jany. 6, 1902.
Reference is had to File 3.

P— OGDEN.

[394]

Mr. McCOURT.—I offer letter of the Commissioner to E. D. Stratford, Special Agent, dated February 10, 1902.

Mr. LIND.—No objection.

Marked "Government's Exhibit 53."

[Government's Exhibit No. 53.]

"'P' W. D. H.

G. R. O.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.
Washington, D. C., February 10, 1902.

Address only the Commissioner of the General Land Office.

Mr. E. D. Stratford,
Special Agent, G. L. O.
Roseburg, Oregon.

Sir:

I have your letter of December 28, 1901, in which you ask to be assigned to duty in some district east of the Rocky Mountains. You say that you have investigated a large number of Timber and Stone entries in Oregon. A number of these have been sold to Frederick A. Kribs, a wealthy land speculator, or to persons whom he represents, and many of them should be recommended for cancallation. Mr. Kribs has employed a number of prominent attorneys to look after his interests in these entries and the cases are of great importance, more than $100,000 being involved in the lands entered.

You say also 'Many of the entrymen are personal friends and neighbors of mine; while the above named attorneys are gentlemen of high standing, who would not attempt to exercise any improper influence in the cases, yet I think that it can be readily seen that any **[395]** request is a reasonable one under the circumstances, and that it should not reflect against

my official standing or integrity. If I should remain in charge of these cases I shall certainly try to do my duty without fear or favor, but I earnestly hope that an exchange can be arranged which will bring to this field a man of ability and experience, who is entirely free from these influences I have mentioned,' etc.

You are instructed to complete the reports on all of the cases referred to which you have examined.

When your reports are received here the advisability of assigning you to duty in another district will be considered.

Very respectfully,

W. A. RICHARDS,

Assistant Commissioner."

Mr. McCOURT.—If the Court please, our records show that on March 28, 1902, the Secretary of the Interior, directed the General Land Office to transmit reports of Special Agents on the filings in controversy in this case, together with the other entries that are referred to through the entire correspondence. We haven't that direction, but we wish you would admit that there was such a direction. We will follow it up with the other matter that you request.

Mr. LIND.—My understanding is that there was an investigation by Special Agent Green, and we would be glad to have that produced. We called for it some weeks ago.

Mr. McCOURT.—We haven't found that, but I had access to the letter press copy of that report of

Mr. Green on last evening. It escaped my mind that you had called for it. **[396]**

Mr. LIND.—Have you the letter press copy?

Mr. McCOURT.—No, I did not request to keep the copy, but I will be pleased to put it in. I will see that you get it within the next couple days.

Mr. LIND.—Where is it?

Mr. McCOURT.—Mr. Green has it, but he will be back shortly.

Mr. LIND.—Is he still in the service?

Mr. McCOURT.—No, he has not been in the service for three or four years, but he has his own letter press copies.

It will be admitted, I presume, that that direction was given?

Mr. LIND.—Oh, yes.

Mr. McCOURT.—I now offer in evidence a letter of the Secretary of the Interior, bearing date May 17, 1902, to the Commissioner of the General Land Office, who is directed to relieve the entries from suspension.

Mr. LIND.—The entries involved in this case?

Mr. McCOURT.—Yes, with others.

Marked "Government's Exhibit 54."

[Government's Exhibit No. 54.]

"932-1902. E. J. H.

L. and R. R. Div. E. J. H.

DEPARTMENT OF THE INTERIOR.

Washington, May 17, 1902.

The Commissioner of the
General Land Office.

Sir:

Your communication of April , 1902, in reply to departmental inquiry of March 28, 1902, enclosing to you the report of Special Inspector A. R. Greene, relative to a large number of supposed fraudulent entries of timber lands in the Roseburg and Oregon City land districts, **[397]** Oregon, has been considered in connection with the report thereon of Special Agent E. D. Stratford, which you enclose.

March 10, 1902, Mr. Green reported upon 53 entries, under the timber and stone act, in the Roseburg district, and 14 entries under the same act and 10 commuted homestead entries in the Oregon City district, all of which were made about two years ago, and of which 22 of those in the Roseburg district were sold to Frederick A. Kribs, and 31 to John A. Willd within a few days after final proof was made.

It appears that four of said entries in the Roseburg district have been patented, and of the remaining 49 all but one are included in the reports of Special Agent Stratford, and also reported upon some entries not included in Mr. Greene's report.

Mr. Green's report is general in its terms, not giving the sources of his information, nor does he submit any affidavits or evidence obtained as to said entries. He states that John A. Willd, representing a lumber company of Minnesota, had the lands cruised by one H. G. McKinley, who subsequently induced parties to locate thereon, representing to them that a mill company stood ready to take the lands off their hands when final proof had been made; that McKinley appeared in a number of cases as a witness; that a large number of said tracts were

mortgaged to Kreibs on the day of the submission of final proof, or immediately thereafter, and others were deeded to him; that 28 tracts were deeded to Willd within 5 days after proof; and that in the case of the 10 commuted [398] homestead entries in the Oregon City district, the lands were all mortgaged prior to the making of final proof. This, however, your office letter states is not correct, but that said mortgages bear date after the submission of final proof, and before the date of the final certificates, the latter not having been given at the time said proof was submitted.

Attached to Mr. Greene's report are sheets containing transcripts from the records of the land offices at Roseburg and Oregon City and the office of the county recorder of Linn county, Oregon, showing the dates of the final certificates; also the dates of the mortgages and sales of the different tracts, the names of mortgagees and purchasers, and the recited consideration therefor.

He also reported, at considerable length, upon the lax and careless methods with reference to timber and stone entries, employed in the local offices in the matter of examination of witnesses, etc.

Under direction of your office, Special Agent Stratford, December 9, 1901, reported upon a list of 48 timber entries made in January and February, 1900, in the Roseburg office, from which it appears that at the time these applications to purchase were being made the Northern Pacific Railroad Company, through its agents, was examining the same body of land with a view to selecting it under some

lieu land law, and on March 9, 1900, by its agent, filed in the local land office a notice of contest against said applications, alleging that the same were not made in good faith for the exclusive use and benefit of the applicants, but for the purpose of speculation; **[399]** that prior to entry they had made expressed or implied agreements for the sale of the lands; that the applicants had not made personal examination of the lands to ascertain their condition, and a hearing was asked in order that said allegations might be proven.

April 18, 1901, said company filed dismissal as to 24 of said cases, and at the same time filed a relinquishment by the timber applicants for the remaining 24 entries. Thereupon the company entered the tracts for which it had filed relinquishments, and the applicants made entry of the other 24 tracts.

It also appears that while these contests were pending McKinley was arrested on a charge of subornation of perjury, in connection with said entries, at the instigation of the Northern Pacific Company, but upon said hearing before an United States Commissioner, he was discharged.

With reference to the 24 entries that were perfected by the applicants, Stratford reported that each of the entrymen, at the date of submission of proof, borrowed of Kreibs the sum of $600, with which to pay for the land and the expenses incident to entry, giving a mortgage on the land entered; that a portion of these mortgages bore the same date as the entries, and others were dated directly thereafter; and that within a very few days thereafter the entrymen sold

the lands to Willd for a nominal consideration, subject to the mortgages.

Attached to Stratford's report are two or three affidavits, procured by him from entrymen, in which [400] said parties testify that they had no agreement with any one prior to making final proof with reference to a sale of the lands, but that the same were taken in good faith for the use and benefit of the entrymen; also the affidavits of McKinley and Kreibs were submitted, denying any connection with the parties or said lands prior to the taking of said mortgages and deeds.

As to this list of entries, Mr. Stratford, after detailing at length the difficulties encountered in procuring evidence of fraud in such cases, and referring to the fact that the contests begun by the Northern Pacific Company against said entries were dismissed because the company and Special Agent Mathers were unable to secure any evidence of fraud, says: 'I am frank to say that I have some reason to believe that every one of these entries were and are fraudulent, but I am just as frank to say that I don't believe I can prove it.' He therefore recommended that the investigation of said entries be closed and the lands passed to patent.

December 28, 1901, said Stratford reported upon 21 cases of timber entries, made at the Roseburg office, which had been submitted to him for investigation. He states therein that at the time the entries were made the parties were living in the county where the lands were located; that in many of the cases Kreibs, at the time of the submission of proof, loaned the

entrymen the money to pay for the land, and took mortgages therefor; and that the [401] tracts were sold to him shortly thereafter, except in the case of Fred Wodtli, in which case proof was made August 16, 1900, and the sale September 24, 1900.

The only affidavits submitted, as to this list, were those of Richard F. Malone, one of said entrymen, and Frederick A. Kreibs, the purchaser of said lands. Malone states that he was located by one Thompson, for which he paid $50; that he had no agreement, either express or implied, with any one prior to making final proof, to sell the land, or the timber thereon, after he had made final proof; that one Mealey, acting for Kreibs, furnished him $700, to pay for the land and expenses of making proof, etc., for which he gave a mortgage after he had submitted his proof; that he was in debt for some town property and concluded to sell the land, and subsequently sold it, through Mealey to Kreibs for $850, receiving $150 in cash above the amount of mortgage.

Kreibs states in his affidavit, made before Special Agent Stratford, March 20, 1902, with reference to this list of lands, that some of these parties spoke to him with reference to loans; that as he did not know much about the lands he referred them to Mealey; that in learning from Mealey that the lands were good security for the money wanted, he made short-time loans thereon; that subsequently, on application of the parties to sell him the lands, he made prices on the different tracts, averaging about [402] $5 per acre, and made purchases thereof; that Mealey was not his agent, and he paid him nothing for his

services; that his impression was, that Mealey made a lower price to the parties than he offered and retained the difference as compensation for his services; that the first knowledge he had of these lands was about the time the parties were to submit their proof, and that he had no agreement or understanding express or implied, with any of said parties, or any one representing them, before they made final proof, as to purchasing the same after proof.

Mr. Stratford, however, reports that 'in no case except that of Fred Wodtli does the entryman offer any reasonable cause for the sale so soon after proof, and in no other case is there offered any reason for the entry, except for pure speculation'; and he considers that the foregoing makes a good *prima facie* case of fraud in connection with each of said entries, except that of Wodtli, under the construction placed by the Department upon the provisions of the timber and stone act as laid down in the cases of United States *v.* Bailey *et al.* (17 L. D., 468) and United States *v.* Searles *et al.* (19 L. D., 258), to which his attention had been called by your office letter of April 15, 1901. He therefore recommends that said entries, except that of Wodtli, be held for cancellation, but says: 'I desire to say further that I have no hope that at a contest, if one should be ordered, in these cases I would be able to procure any additional testimony than that herewith offered.'

February 28, 1902, Stratford reported upon another list of 17 entries, made in the Roseburg land district, [403] which were referred to him by your office letter of November 2, 1901. In each of

these cases, as appears from his report, the land was conveyed to Kreibs shortly after final proof was made; the entrymen were generally residents of the county in which the lands are located; they were persons of moderate financial circumstances, and of reputation for truth and veracity in the neighborhood in which they lived; that they had no well-defined idea of what use they would make of the lands after entry, but as the same were being rapidly taken up by the Northern Pacific Company and individuals who came in from distant states, they concluded to make entry; that they knew the lands were worth more than they would have to pay the Government therefor; and that scores of persons stood ready to purchase said lands at any time they might wish to sell, and to that extent they entered the lands as an investment and for speculation.

He also reports that in none of these cases was he able to find any evidence connecting Kreibs with the entry or entrymen prior to the submission of final proof, and he recommends that said entries be relieved from suspension and the lands go to patent. The affidavits of Arthur L. Thornton, one of said entrymen, and Kreibs were submitted.

Your office letter of April, 1902, submitting said reports of Special Agent Stratford, with accompanying testimony and papers, enters into a very full consideration and statement of the situation, as developed by the special examination had, as to all of these entries reported upon, together with the difficulties attending the establishment of fraud in this class of cases; and [404] it is stated therein that as to these entries,—

if proceedings are begun looking to their cancellation, on charges that they were made for speculative purposes and in the interest of others than the entrymen, the Government can show that when the filings were made Kreibs and Willds were known to be ready to purchase timber lands in the locality where these entries were made; that the parties were located upon the lands by H. G. McKinley, who was paid by them for his services; that Stephen A. D. Puter secured options on some of the tracts when final proof was made, and in these cases the sales were made through him to Willds; that some of the entrymen borrowed the money with which to make final proof from Kreibs, and that soon after the final proofs were made the lands were all conveyed to Willds or to Kreibs.

It is also said in your letter that while these things raise a suspicion as to the bad faith of the entrymen, they do not furnish such positive evidence of fraud as will justify the cancellation of the entries under the decision of the Court in the case of United States v. Budd (144 U. S. 185), the facts being very similar.

The Department has made a careful examination of the matter of these entries, as set forth in your office letter, together with the reports of Special Inspector Greene and Special Agent Stratford, and the sworn statements of entrymen and others, on file in connection therewith, and is unable to discover any appreciable difference as to the situation in the three different lists reported on specially by Mr. Stratford, though he recommends that in two of said lists the

entries be relieved from suspension and the lands passed to patent, while in the other list of 21 entries, reported on by him December 28, 1901, he recommends that all except one be held for cancellation. No evidence is submitted as to said list or referred to as obtainable, of any agreement made by the entrymen before the submission of final proof, with reference to the sale of said lands. [405] In fact, the two affidavits, as to said entries, on file, state positively that no such agreement or understanding was had with anybody, and Mr. Stratford says that he does not expect to be able to furnish any additional testimony. His recommendation as to this list seems to be based upon the showing that the parties sold the lands very soon after entry and give no 'reasonable cause for the sale so soon,' and do not offer 'any reason for the entry, except for pure speculation,' which he considers makes a good *prima facie* case of fraud, under departmental rulings in the cases of United States v. Bailey, and United States v. Searles, *supra.*

An examination of those cases, however, shows that the evidence of fraud was much stronger in each than in case of the entries under consideration herein. In the Searles case the entrymen were employed and paid for making the entries for one Montgomery. The testimony was to the effect that they never examined the lands, did not procure the final proof witnesses, or furnish the money to pay the Government for the land, and the expenses incident thereto, but that upon the submission of final proof they executed the deeds in accordance with the agreements entered

into before making the applications to purchase, and received the amount promised therefor. In the Bailey case, one Lohr located the parties, and, as an inducement to have them make the entries, he, at the time of locating them, promised to buy the lands when proof had been submitted and to pay $50 more to each than any one else would pay. As to the case of one McBride, who made entry July 6, 1883, Lohr testified that he had no understanding with McBride [406] in the month of June, 1883, relative to the purchase of the land covered by his entry, other than he had with all parties whom he located; that he agreed to buy any claim located by him after the entryman had obtained title, if the latter wanted to sell, and would pay more than any one else; that he could do this because it would save an examination of the claim, and he agreed, usually, to give $50 more than any one else, which promise was made 'as an inducement for the parties to take my (his) word and knowledge, as being good as to the quality and quantity of timber.' It also appeared in that case that Lohr had an agreement with Bailey, in the spring of 1883, by which Bailey was to furnish the money to buy timber lands and Lohr was to attend to the buying and selling, the profits to be divided between them, which agreement was carried out. Neither Bailey nor any of the entrymen were produced as witnesses in the case.

The facts on which the decisions in these two cases were based seem to distinguish them from the entries under consideration. In the latter, Willds, who purchased some of the tracts after proof was submitted,

and Kreibs, who furnished the money to the parties to pay for the land at the time of submission of proof, taking mortgages thereon, and subsequently purchased some of the tracts, are not shown, either directly or indirectly, to have had any connection with the lands or entrymen prior to the submission of proof. There is no evidence of offers to purchase the lands as an inducement to make entry. McKinley merely said to some of them that, after entry, if they desired to sell, he would try and find a purchaser. In the Bailey case, *supra*, Lohr's promise to buy and pay $50 each more than any one else [407] would pay, was an inducement for persons to make entries purely for speculation. It was held in that case (syllabus) that—

> Timber land entries made for a speculative purpose, and through a collusive arrangement by which the entrymen are induced to make said entries with a view to selling the lands embraced therein to the other party to such agreement, are in violation of the statute and must be canceled.

It is evident, from the reports of Special Agent Stratford, which appear to have been made upon thorough investigation, and examination of many of the entrymen, and from the evidence submitted by him, that a hearing in the cases under consideration would not disclose sufficient evidence of fraud to warrant the cancellation of the entries. Certainly, under the showing, no stronger case could be made respecting these entries than was made in the case of United States v. Budd, *supra*, wherein the court held that there was no violation shown of the timber and stone

act of June 3, 1878, and probably not so strong.

You are therefore directed to relieve said entries from suspension, that the lands covered thereby may, in the absence of any further and good reason to the contrary go to patent.

Regarding the entries in the Oregon City district, referred to in Mr. Greene's report, your letter states that all lands embraced therein have already been patented, except in the case of two of the commuted homestead entries. These entries were not reported on by Mr. Stratford, but there is no showing made in the report of Mr. Greene, as to the 14 timber entries and 10 commuted homestead entries in that district, that would seem to warrant the pursuance of a different course in relation to them from that directed herein with **[408]** reference to the foregoing timber and stone entries in the Roseburg district. In the case of these homestead entries it appears, from *you* letter, that final certificates were not issued until several days after the proofs were made, and that the lands were mortgaged by the entrymen after the submission of final proof, but before the certificates were issued. Under departmental decision in the case of Eberhard Querbach (10 L. D., 142), this would not defeat the right to patent. You are therefore also directed to relieve these entries in the Oregon City district from suspension.

As to the lands in the ceded Siletz Indian Reservation, which have recently been surveyed and are reported by Mr. Greene to be chiefly valuable for timber, it appears that the area is not large, and many settlers are already on said lands, some of whom have

made entries since survey. The Department concurs in your recommendation that said lands should remain as at present, to be disposed of under the townsite and homestead laws, as provided by section 15 of the act of August 15, 1894 (28 Stat., 326). Under this act, as modified by the act of May 17, 1900 (31 Stat., 179), and the act of January 26, 1901 (31 Stat. 740), the lands will not be as likely to fall into the hands of speculators as if disposed of under the timber and stone act.

The papers are herewith returned.

Very respectfully,

E. A. HITCHCOCK,

Secretary. [409]

Mr. McCOURT.—I offer in evidence the direction of W. D. Harlan, Chief of Division "P" of the General Land Office, to Chief of Division "C" of the same office, bearing date May 28, 1902, in which Division "P" notifies Division "C" that the entries involved in this case have been relieved from suspension under Departmental Instructions of May 19, 1902.

Mr. LIND.—Which is the direction of the Secretary of the Interior last introduced and referred to.

COURT.—I understand this correspondence shows that Stratford was directed to investigate these claims and made reports to the General Land Office and that the entries were subsequently called for by the Secretary and transmitted to the Secretary and then the Secretary of the Interior directed that the suspension be removed.

Mr. LIND.—And directed the issuance of patent.

Mr. McCOURT.—I don't know that he specifically

authorized patent, but it would follow.

Mr. LIND.—I call the attention of the Court, however, to the fact, that in the Secretary's direction—the last document offered but one—it is quite lengthy and the several reports are reviewed and reference is made to a report of Special Agent Green which is reviewed and commented upon, as well as the Stratford report, and it is the Green report that we are planning to secure later.

Mr. McCOURT.—We endeavored to get that from the General Land Office, I believe, also from the Secretary of the Interior, but somehow it was not forwarded. Last evening I saw a press copy and it really is an adverse report, but made in such a general way and without any specific direction, that I thought it would be immaterial to this investigation, forgetting for the moment that Governor Lind [410] had called for it, or I should have kept it. I will have it brought back within the next couple days.

Mr. LIND.—We would have obtained copies of some of these documents, or perhaps all of them ourselves, but for the fact of a rule in the Interior Department that any matters pending in Division "P"—that is, for investigation—are not subject to inspection by the public, and certified copies will not be issued upon request, except at the instance of the Attorney General or an order of the court. I will volunteer the statement, however, in connection with what the District Attorney has said, that the review of the contents of the Green report and the Secretary's decision is so complete that the whole matter can be before the Court whether we succeed in get-

ting the Green report or not. That is accurate, is it not?

Mr. McCOURT.—I think so, though I have not as carefully examined it as I might.

Instructions from Division "P" to Division "C" marked "Government's Exhibit 55."

[Government's Exhibit No. 55.]

"In reply please refer to 1902–85,089
P
G. R. O.

DEPARTMENT OF THE INTERIOR,
General Land Office,
Washington, D. C., May 28, 1902.

Address only the
Commissioner of the General Land Office.
Chief Division 'C,'
General Land Office.

Sir:

The following timber and stone cash entries in the Roseburg, Oregon, land district, which were referred to this Division for investigation by a special agent, have **[411]** been relieved from suspension under departmental instructions of May 19, 1902, and are returned to your Division herewith.

The entries referred to are Timber and Stone Cash Entries Nos. 8168, 8169, 8170, 8171, 8172, 8173, 8174, 8175, 8176, 8177, 8178, 8179, 8180, 8181, 8182, 8183, 8184, 8186, 8231, 8232, 8233, 8234, 8235, 8236, 8238, 8239, 8240, 8241, 8242, 8243, 8244, 8416, 8419, 8422, 8440, 8441, 8442, 8443, 8444, 8445, 8446, 8447, 8448, 8508, 8509, 8510, 8511, 8512, 8513, 8516, 8517, 8522, 8649, 8651, 8653, 8664, 8665, 8666, 8667, 8668, 8669,

8670, 8685, 8688, 8689, 8690, 8691, 8692, 8700, 8701.

Very respectfully,

W. D. HARLAN,

BHG Chief Div. 'P.' "

[412]

[Proceedings Had April 27, 1910, 2 P. M.]

Portland, Oregon, Wednesday, April 27, 1910,
2 P. M.

Mr. UELAND.—May it please the Court before adjourning when the District Attorney asked for the production of any contract between the defendants Smith and Kribs concerning the acquisition of lands affected by this suit, the statement was made by counsel for the defense that there was no written contract, and in the colloquy which ensued there was a divergence of statement on the part of counsel as to the date of the first written contract. In order that the record may not show any different statements on the part of the attorneys for the defendants, I now produce for the inspection of the District Attorney two original contracts between the defendants Smith and Kribs, the first dated, as I said this morning, December 21, 1901, and the other attached to it December 5, 1902; and in presenting this for his inspection I want to amend a statement I made this morning as to there not being any written contract covering the period then referred to, to this extent. I observe, which I was not aware of when I made that statement, that the contract of December 21, 1901, contains an adjustment of accounts between those two defendants as to lands previously acquired and thus might be said to be a written contract covering that period, although of a later

date. If that is in conflict with my statement, I must amend my statement.

Mr. McCOURT.—I offer the contracts themselves. They may be deemed read into the record and I will not offer them as exhibits. **[413]**

MEMORANDUM OF SETTLEMENT AND ACCOUNTING

Between C. A. Smith and Fred A. Kribs, made the 21st day of December, 1901.

Said Kribs having devoted much time and incurred considerable expense during the years 1900 and 1901 in locating and purchasing timber lands in California and Oregon for said Smith, the land so located or purchased aggregating about 94022 acres, the sum of $26,107.37 is hereby agreed upon by said parties as the amount to be paid said Kribs for all such services rendered and all such expenses incurred by him prior to this date.

Said Kribs has received divers sums of money from time to time from said Smith, and stands charged this day on the books of C. A. Smith Lumber Co. for the sum of $2601.87. For this sum he shall now receive full credit on account of the $26,107.37 aforesaid. The remaining $23,505.50 shall be paid and liquidated as follows. Said Kribs shall be paid as it may be demanded by him from time to time not to exceed $20,000, with 4 per cent interest on the portion of said sum which shall remain unpaid after the date hereof.

The lands located and purchased, as aforesaid, include several thousand acres in Lynn County, Oregon, conveyed by divers parties to one John A. Willd, and several thousand acres in Oregon and

California located and claimed by Forest Reserve and other scrip for which patents have not yet been issued by the United States.

Said Kribs shall, without any additional compensation for his services or personal expenses, exert his best endeavors to perfect the title to all the lands located and purchased through him, and first herein referred to, as to which perfect title is not yet acquired, but all expense **[414]** thereby incurred, except for his services and personal expenses, shall be paid by said Smith.

When patents have issued by the United States to the lands last mentioned to such an extent that title to 80,000 acres of the 94,022 acres aforesaid is perfect, the remaining $3505.50 of the compensation for said Kribs, above agreed upon, shall be paid from time to time when demanded by him as fast as patents are issued for the remaining lands the amount to be paid from time to time to be upon the basis of 25 cents per acre of the remaining lands so patented until said sum of $3505.50 is fully paid.

It is further hereby agreed, that if timber lands in either of said states, other than the lands hereinbefore referred to, shall hereafter be acquired by said Smith through the efforts of said Kribs, the compensation for his services and personal expenses shall be at the rate of 50 cents per acre for all lands so acquired, unless otherwise expressly agreed upon between the parties. This includes about 520 acres in Sections 18 and 20, Township 30 North of Range 9 West, in Douglas County, Oregon, and three claims in Sections 20, 22 and 34, in Township 30 North of Range 10 West, in Coos County, Oregon, which have

lately been bargained for.

C. A. SMITH.
FRED A. KRIBS.

[415]

SUPPLEMENTARY AGREEMENT.

As a further and supplementary to the memorandum of settlement and accounting between C. A. Smith and Fred A. Kribs, made December 21st, 1901, it is hereby agreed and understood:

Referring to the last clause of said agreement, there has been paid to said Kribs by said Smith under said clause, in full for all services rendered thereunder, and also for any and all other services, both in securing lands and otherwise, since the date of said referred to agreement and up to the present time, the sum of five thousand, five hundred, fifty and 60/100 ($5,550.60) Dollars.

It is hereby further agreed and understood that in and for the consideration so paid, said Kribs shall prosecute, at his own expense so far as his personal expenses are concerned, to perfect title, as far as possible, any and all lands so entered or secured since the date of said agreement until the present time, with the understanding, however, that said Smith shall pay any and all other necessary expenses for attorney fees that may be thought necessary by said Kribs.

It is also further understood and agreed that for any lands already entered, but not reported on and for any and all lands which may be entered or purchased during the next twelve months, said Kribs shall receive a compensation of thirty (30¢) cents per acre for all lands so secured and title perfected

by him, being intended to cover all services similar to the above.

This supplementary agreement is not intended to cover any other portion of said agreement of Dec. 21st, 1901, except the last clause thereof. **[416]**

In witness whereof we have hereunto set our hands this fifth day of December, 1902, at Minneapolis, Minn.

C. A. SMITH.
FRED A. KRIBS.

Witnesses:

J. F. BISHOP.
CHARLES TRABERT. **[417]**

Testimony of Ralph P. Cowgill taken in case No. 3320 and stipulated to be used in this case as if taken herein.

[Testimony of Ralph P. Cowgill, for the Government.]

RALPH P. COWGILL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live? A. Medford, Oregon.

Q. What is your business?

A. Civil engineer.

Q. In what capacity were you employed during the year 1908?

A. I was a Special Agent of the General Land Office.

Q. How long were you employed in that capacity?

A. June 1st to about the 1st of December—some-

(Testimony of Ralph P. Cowgill.)
where along there.

Q. What had you been doing prior to that?

A. Engineering work.

Q. State whether or not you had occasion to go to Albany in Linn County, about the 10th day of September, 1908. A. Yes, sir.

Q. What was the purpose of that visit there?

A. It was to examine some deeds in connection with C. A. Smith's suit.

Q. I hand you what purports to be a deed of Charles Smith and Johanna A. Smith to the Linn and Lane Timber Company, bearing date the 4th day of June, 1906, and ask you whether or not that was one of the deeds you examined there at that time?

A. I believe this is one of the deeds. I can identify it absolutely by some notes that I took at that time and turned in. **[418]**

Q. (Handing witness paper.) Are those the notes that you refer to?

A. Yes, sir. That is the deed. (After examining deed and notes.)

Q. For what purpose did you examine the deed?

A. Well, I examined it—

Q. What sort of an examination did you make?

A. I read it over carefully and I examined the signatures and made a special examination of the date when this was put on record and the date of when these instruments were made before the Notary Public—signed.

Q. There was a number of other deeds relating to the same case there at the same time?

(Testimony of Ralph P. Cowgill.)

A. Yes, sir. 7, 8 or 9, I think, altogether. 7 I have a record of.

Q. Now, what was the appearance of that deed there at that time as to its—as to how recently it had been executed?

A. The deed at that time—this particular deed, looked to be very recent to me; in fact, some of the typewriting when I put my fingers on it would rub over and smudge, and even the signatures showed to me that, in my estimation, it was very, very recent.

Q. Did you make comparison between that deed and other deeds there purporting to have been made about the same time?

A. Yes, sir. Here is the notes that I made at the time.

Mr. UELAND.—I would prefer that you testify without your notes, if you remember.

A. Well, of course, I prefer to refer to my notes, because they were made at the time. I can testify, however, without the notes.

Q. If you can testify without the notes, don't use them.

Q. (Read.)

A. Yes, sir. This— **[419]**

Q. How did it compare with the other deeds apparently bearing the same date?

Mr. UELAND.—I object to the comparison. I object to the question as incompetent—to make comparison with something that is not here upon which we cannot cross-examine the witness.

Q. Well, have you got the other deeds here that he did compare them with; for instance, the deed

(Testimony of Ralph P. Cowgill.)
purporting to have been made October 27, 1906, by John A. Willd and Ida Willd to Charles A. Smith, for one-eighth interest in the lands in Linn County?

Mr. UELAND.—Those are ancient documents that you refer to.

A. No, they are more recent than this (Smith deed); October 27, 1906, is somewhat younger than June 4, 1906.

Mr. UELAND.—Well, be that as it may, there can be no value in comparing the age of one document with the age of another document, the age of which is not known.

Mr. McCOURT.—Have you those other deeds?

Mr. LIND.—They don't pertain to this case.

Mr. McCOURT.—They refer to matters in controversy in this same series of cases. John A. Willd and Ida Willd to Charles A. Smith for the one-eighth interest to parcels of land in Linn County.

Mr. LIND.—I have not.

Mr. McCOURT.—B. F. Nelson and Mary Nelson to Charles A. Smith of one-fortieth interest in lands mentioned in these timber cases. Charles J. Swanson and Christine Swanson to the Linn and Lane Timber Company for a one-fourth interest in the lands in the other cases.

Mr. UELAND.—I have them. **[420]**

Mr. McCOURT.—That purports to have been made May 28, 1906.

Deed of Charles L. Trabert and Harriet A. Trabert to Charles A. Smith for a one-tenth interest in the lands in Linn County.

Mr. UELAND.—Here it is.

(Testimony of Ralph P. Cowgill.)

Mr. McCOURT.—Deed of J. E. Holmberg and Minnie Holmberg October 26, 1906, to an undivided one-fourth interest—I presume that deed was made to Smith.

Mr. UELAND.—You said from Holmberg to Smith—we have that.

Q. I hand you deed of the 26th day of October, purporting to be from J. E. Holmberg and Minnie Holmberg to Charles A. Smith; a deed bearing date May 28, 1907, Charles J. Swanson and Christine Swanson; and deed of Charles L. Trabert and Harriet A. Trabert, bearing date the 23d day of October, 1906, the lands in the Swanson deed being conveyed to the Linn and Lane Timber Company and in the Trabert deed to Charles A. Smith, and ask you if those were among the deeds you examined there that day in connection with that other deed?

A. This corresponds very much with the—the deed from J. E. and Minnie Holmberg corresponds with the one as far as I remember. There were several changes in it. As, for instance, "1905" and the "5" is scratched out and made "6."

Mr. UELAND.—I object. That is not responsive to any question.

COURT.—Identify the deed. That is all you were asked to do—as to whether it is the one you examined at that time.

A. May I see the notes in question? I copied—took an abstract. (Examines notes.) This is not the deed that I examined. **[421]**

Q. That Holmberg deed?

A. It is the Holmberg deed, but I would like to

(Testimony of Ralph P. Cowgill.)

examine this number a little more to find the number that corresponds here. Here it is, I guess. It may be that I am wrong. Here is the right number —7933. This is—that is the deed.

Q. Is it one of them? A. Yes, sir.

Q. Look at the other two there and see if they were there at that time.

A. I think this is one also—and this one of Swanson's.

Q. Now, examine the Trabert deed.

Mr. UELAND.—I am mistaken in saying that I did not have the deed from Nelson. Here is that deed. I was misled by it having been recorded in another county at another date.

A. So far as I am able to tell, that is the same deed.

Q. That is one of the deeds that were there?

A. Yes, sir.

Mr. LIND.—Which one is that?

Mr. McCOURT.—That is the Trabert deed.

Q. I call your attention to deed of B. F. Nelson and Mary Nelson, bearing date the 10th of August, 1907, to Charles A. Smith, and ask if that is one of the deeds that were there, with which you made comparison?

A. This corresponds also, yes, sir.

Mr. UELAND.—Mr. District Attorney, does that cover all you inquired for?

Mr. McCOURT.—All but the Willd deed. There was a Willd deed filed there at that time. Not lands in this case, but lands in another case.

Mr. UELAND.—I have that too. I was misled by

(Testimony of Ralph P. Cowgill.)

the county and the date. Here it is.

Q. I ask you to examine a deed bearing date the 27th day of [422] October, 1906, purporting to be executed by J. A. Willd and Ida Willd, his wife, to Charles A. Smith, and ask you if that was among the deeds you examined there? A. Yes, sir.

Q. I also call your attention to deed purporting to be made the 15th day of August, 1907, by Nils O. Werner and Eva C. Werner, his wife, to the Linn and Lane Timber Company, and ask you if you examined that at the same time?

A. To the best of my knowledge it is.

Q. In your examination of those deeds at that time, did you call anyone to your assistance?

A. Yes, sir.

Q. For the purpose of determining their order in which they had been made? A. Yes, sir.

Q. Who?

A. The County Recorder and his assistant, the Deputy Recorder. I also—

Q. What was the Recorder's name—Frohman?

A. Crum— I could not tell you the name now unless I would hear it. It was a Miss—a Mrs. something; a woman there, but I don't remember her name right now. It has slipped by memory.

Q. Miss Francis?

A. Yes, Miss Francis, I believe.

Q. And the other party was the recorder himself?

A. The recorder himself.

Q. Who else did you call?

A. I called an abstracter at the same place.

(Testimony of Ralph P. Cowgill.)

Q. Mr. Curl?

A. Curl, that is the name. **[423]**

Mr. UELAND.—What is the name?

A. Curl.

Q. Now, then, I think I asked you as compared with these other deeds—I don't know but what he answered that once—as compared with those other deeds, what was the appearance of the deed of C. A. Smith to the Linn and Lane Timber Company?

Mr. LINN.—That is incompetent. No base is laid for expressing an expert opinion. He can describe the instrument.

COURT.—He can tell in what way they differed, if they did differ, what he saw in fact.

Q. How did they differ there? How did that deed differ from the others in appearance?

A. It was much newer. It was very fresh. The typewriting in the pages here would blur it a little bit when you touched *with* with your fingers, and the signatures when held to the light were very plain as if they had just been written. You could see the ink with this lustre, not like ink after it has been dried for any length of time.

COURT.—Speaking of the deeds to the Linn and Lane Timber Company now? A. Yes, sir.

Q. That is the deed you had in your hand just now?

A. Yes, sir. (Referring to Smith deed to L. & L. T. Co.)

Q. And what was—what do you have to say about that deed of Nils O. Werner to the Linn and Lane Timber Company? A. That likewise was—

Mr. UELAND.—Wait a minute. We object because no averment in the bill that that deed was not executed at the time it purports to be.

COURT.—He is offering this for the purpose of comparison only, I suppose. **[424]**

Mr. McCOURT.—My recollection was that there was a similar allegation in there, but I can't recall now.

Mr. UELAND.—You are mistaken about that.

Mr. McCOURT.—I think the bill charges both these were executed later. No, it is not charged in the bill that it was antedated, but I offer it with the others for comparison.

Deed Smith & wife to L. & L. Timber Co. marked "U. S. Exhibit 155."

Deed Holmberg and wife to Smith, marked "U. S. Exhibit 156."

Deed Swanson and wife to L. & L. T. Co. marked "U. S. Exhibit 157."

Deed Trabert and wife to Smith, marked "U. S. Exhibit 158."

Deed Nelson and wife, to Smith, marked "U. S. Exhibit 159."

Deed Willd and wife to Smith, marked "U. S. Exhibit 160."

Deed Werner and wife to *L. & T. Co.*, marked "U. S. Exhibit 161."

McCOURT.—I may want to identify further the Werner deed.

Cross-examination.

(Questions by Mr. UELAND.)

In the questions which I shall put to you now on

(Testimony of Ralph P. Cowgill.)

cross-examination, I am going to speak of the fading of the ink and the fading of writing, whether it is by pen and ink or by typewriter, in the sense of its losing its freshness, not in the sense of it becoming indistinct.

A. I understand that, all right.

Q. Do you claim to have expert knowledge upon the subject of the fading of ink or of writing? [425]

A. I do not claim to be an expert, but I have had considerable experience in that line of work.

Q. You don't claim to have expert knowledge on that subject?

A. Not expert; I have considerable knowledge, though.

Q. Have you had occasion to give special study to any case of the fading of ink, except in this instance? A. Yes, sir.

Q. Please state the case.

A. Well, my first experience began at a business college way back in 1898 at Spokane, Washington, and I followed it up ever since, and in the use of the typewriter—I have used one for several years, and I have kept track of that in a way, to see—to learn.

Q. Well, that would be the same experience then, that any one connected with typewriting would have upon that subject, wouldn't it?

A. Well, to a certain extent, yes.

Q. My question is whether you have had occasion in the past to study any special case where the age of a document was in question.

A. Yes, sir, I have had several—in pursuance of

(Testimony of Ralph P. Cowgill.)

that I was in Washington some years ago, and I had a chance to go back and find the Declaration of Independence and just used that—

Q. That is, you studied the Declaration of Independence?

A. I just studied the writing just to see what effect it would have.

Q. You studied to see how old the ink would be upon the Declaration of Independence. Is that the idea?

A. Yes, just to see the effect—how it faded, the impression the ink left. **[426]**

Q. What was your conclusion in inspecting the ink on the Declaration of Independence as to how old it was?

A. Well, that is hardly a fair question, inasmuch as we know the age of it.

Q. Referring to the deed from C. A. Smith and wife to the Linn and Lane Timber Company of June 4, 1906, that you have identified, was it the whole instrument that seemed to you to be new and fresh, or was it only particular parts of it?

A. Which instrument was that, please?

Q. (Read.)

A. The signatures in particular seemed to be fresh and the typewriting was fresher than the other instruments with the exception of that of the Holmberg.

Q. Was there, in your judgment, any difference in the age of the typewriting and in the signatures?

A. That would be—there was in my judgment, there was a little difference, but I would not—but I

(Testimony of Ralph P. Cowgill.)
wouldn't attempt to give any definite time.

Q. You would not be—you don't feel that you could conscientiously state it as your opinion that as a matter of fact, there was a difference in the age of the typewriting and the age of the signature?

A. No, I wouldn't at this time without referring to my notes—could not say that there was very much difference in the two. This is two years since I examined that.

Q. In your judgment was there any difference in the age of the signatures of Mr. Smith and Mrs. Smith and in the signatures of the subscribing witness and the Notary?

A. I don't remember that now. It seems to me that there—I wouldn't say; I don't remember about those. It seems to me, just as I remember it, that the signatures of Smith [427] himself, and wife were newer, but I could not say. I would not swear to that until I looked at my notes.

Q. You have now examined that deed and certain other deeds which you examined at the same time at the Recorder's office, have you not?

A. Yes, sir.

Q. Do you think that you are able, at this time, in looking at these different deeds, to say which is the older without looking at the dates?

A. I think so, yes, sir.

Q. Well, we will try you on one and see. I show you document marked for identification Defendants' Exhibit "C" and ask you to look at it except—and ask you not to look at the first page where the date

(Testimony of Ralph P. Cowgill.)

is, and not to look at the date of the acknowledgments.

A. Well, it will be necessary for me to look at the signatures, too. They go with it.

Q. Yes, you may look at that. That is the second page, and there is the third page. Now, you may take Plaintiff's Exhibit 155, and make comparison and then state which you think is the older instrument.

A. On the face of it this shows to be the older instrument, but that ink—it might have been made at the same time.

Q. The fact is, you cannot tell which is.

A. You cannot tell right down to within a short period of time, of course.

Q. Within how short a period of time do you think you could tell?

A. Within six months or a year—something that way, with such a little lustre.

Q. Within six months or within a year?

A. That is a little bit newer. [428]

Q. You say that "Defendants' Exhibit 'C' for Identification" as shown you, is newer, or do you?

A. It looks to be a little newer there—probably is about the same time. The difference in the ink there would make some difference. There is a little difference in that ink. This is a newer piece of work than this.

Q. How much?

A. I would not say exactly how much. It might have been made within a month—probably some-

(Testimony of Ralph P. Cowgill.)
where near that time.

Q. However, for all you can tell "Defendants' Exhibit 'C' for Identification" might have been made within a month or two?

A. So far as that part, not the signatures—that typewriting would not change so very much in a short time.

Q. As to those signatures, how recent might those have been made, for all you can tell?

A. Well, for all I can tell, they might have been made—they was evidently made—I want to hold it up to the light so I can tell.

Q. Don't look at the dates.

A. I won't look at the dates. I will be honest with you in that.

Q. You might see the certificate on the other side.

A. No, I won't. That appears to me to have been made about the same time—I examined the other deed.

Q. Now, what is your best judgment on that subject, whether it is the same age or a different age?

Mr. McCOURT.—Let him compare the signatures.

Q. Yes, indeed.

A. If you will hide the dates I want to hold them up to the light.

Q. All right.

A. I can't see it. Well, these appear to me to have been [429] made about the same time, yes, sir.

Q. Now, you keep that. (U. S. Ex. 155.)

A. This is the same age you just had here.

(Testimony of Ralph P. Cowgill.)

Q. I now show you the second page of a document marked "Defendant's Exhibit 'D' for Identification," and ask you to state how old, in your opinion, that document is—typewriting and the signatures. There is the certificate again that I don't want you to examine.

Q. You are trying to get me into trouble.

Q. No, not at all.

A. Let me see that. Well, I can't tell any difference in that one. I can tell the difference in this one, but not the one you handed me previous.

Mr. LIND.—Which does he refer to by "this"?

Mr. UELAND.—My question will cover.

A. Let me have those two again, please. That ink shows a plainer signature—a more recent signature than this one.

Q. Is it your judgment that the signature on "Defendants' Exhibit 'D' for Identification" is more recent than it is on "Plaintiff's Exhibit 155"?

A. Yes, sir, but I would not swear it is very much, but it is some.

Q. How much would you say, in your opinion, it would be more recent? Give your best opinion.

A. Well, it might be a year. I should hate—I would not swear it would be, but it may be. It makes some difference where it has been kept. So many things enter into this writing proposition. It is very hard for even the best of us to tell.

Q. I show you two documents—one marked "Defendant's Exhibit 'E' for Identification" and the other marked "Defendant's Exhibit 'F' for Identification." I just hand you the [430] type-

(Testimony of Ralph P. Cowgill.)

writing part of those two documents. Can you tell which is the older or whether they are the same age?

A. I—it is hard to tell on these. It is different—different kind of ink. The black looks to be the older, but I can't tell. The change in them—they are not the same. The change—the black—you ought to have two of the same kind of ink to compare them. I could compare them better.

Q. But your judgment is that the black—the one in black typewriting—is older than the one in blue typewriting?

A. It looks that way from here. I hate to compare that way. It is pretty hard to do.

Q. Indeed, you can't tell the difference in age.

A. You can—you can tell. My testimony in this case covers the deeds in question, and I would like to have those to answer from, if it is fair. My knowledge comes from these. No one can say from looking at them—the paper and the ink—

Q. Well, typewriting is typewriting, whether in a deed or any other documents, isn't it?

A. Oh, certainly; certainly.

Q. Now, would you please state where the typewriting, in your judgment, is the older in these two documents—if you can state, and if you can't please say so.

A. Let me take it. My judgment is that is the older one.

Mr. McCOURT.—The black one?

A. Yes, sir.

Q. How much older, would you say?

(Testimony of Ralph P. Cowgill.)

A. I would not state how much older. It is on account of the difference in ink. It may not be any older so far as that goes, but it looks that way.

Q. Might not be any older?

A. Might not be. As a matter of fact, after I look at six **[431]** or eight or ten of those, a fellow—he is hardly capable of passing judgment on the age of it. You can get so many different shades and they all blend together.

Q. On the two documents that I just have shown you, I show you the signatures of John McCourt, the District Attorney. Which, in your judgment, is the older signature?

A. Turn it up to the light. I can't do anything without the light.

Q. Well, I don't want to show you the date.

A. Well, you have to take it so I can hold it to the light.

Q. Well, we will take it to the window.

A. Well, I have to have the light show through.

Q. I can't do that without showing the date underneath. That is the trouble.

A. I would not attempt—

Q. Can't you get the light this way?

A. You can't get the light so it will shine through the paper.

Q. Can't you get it this way?

A. No, I want it to shine through the paper. You can cut that out if you want to.

Q. No, the Court would not let me do that.

A. If I claimed to be an expert, it would be a different proposition. I might jump right at it

(Testimony of Ralph P. Cowgill.)
and tell you, but I am not pretending to be an expert.

Q. But you are no expert?

A. ,I just have some knowledge of it, as I testified.

Q. Well, please take and hold "Defendant's Exhibit 'E' for Identification" up to the light. Then, keeping the paper that way—that is, "Defendant's Exhibit 'E' for Identification."

A. Now hold the other up there.

Q. That is "Defendant's Exhibit 'F' for Identification." **[432]**

A. Let me see this other one. I believe the other is the older—the signature. It shows the older. It looks to me that way, holding it up here in the dark.

Mr. UELAND.—May it be stated that the instrument which the witness thinks is the older as to the signature is the amended bill, and the one which he thinks is the more recent is the original bill.

Mr. GEARIN.—How much time elapsed between the two?

Mr. UELAND.—About six months.

A. I only got one chance to get out of that. I told him the names showed the other way. That was my testimony.

Q. I show you the typewritten matter on "Defendant's Exhibit 'G' for Identification" without showing you the signature and the date at the foot of it. How old, in your judgment, is that typewriting?

A. I don't think that is over six months.

(Testimony of Ralph P. Cowgill.)

Q. Tell as near as you can how old.

A. Let me have it just a minute, please. I don't think it is over six months. I would not say under that. I would not make any estimate under six months as to the age of the thing.

Q. Is that as near as you can tell the age of it?

A. Yes, sir, that is as near as I can tell.

Q. Well, you notice, now you see the signature, it is dated the 21st day of April, 1910, don't you?

A. Well, that has been made—that is as near as anyone probably could tell—six months.

Mr. UELAND.—May the record show that this is the complainant's amendment to the bill filed the 21st of April, 1910.

A. A good thing I don't claim as an expert.

Mr. LIND.—He used the term "smudge."

Q. What do you mean by the term "smudge"? I think you used **[433]** that.

A. I term a smudge when I want to make a copy, or anything, I take a piece of paper and rub my pencil over it and I copy it.

Q. Will you say whether the typewriting on Plaintiff's Exhibit 155 won't smudge any at this time? A. That one does not. That does not.

Q. Look carefully and see if it does not smudge.

A. No, sir, not the way it did the day I examined it there.

Q. That is not the question. Does it smudge now?

A. No. It may smudge a little, but not so plainly as when I examined it.

(Testimony of Ralph P. Cowgill.)

Q. So your answer is it smudges a little now, but does not smudge as much as it did?

A. I will not answer it smudges now at all. It did smudge when I examined it—

Q. Doesn't it depend a little upon—

A. —that is not smudging there. That is nothing but dirt off his fingers. That is dirt. That is not smudging.

Q. Isn't that smudging? Is that dirt?

A. That seems to be a smudge there, but your finger is damp, isn't it? A little moist? That is a smudge there, I would call it.

Q. Without spending much time on it, you notice, do you not, that the typewriting of Plaintiff's Exhibit 155 does smudge some, even now?

A. It does with continued rubbing, but you simply didn't have to touch it when I examined it before; just barely touch your fingers to it.

Q. You can tell, can you not, from the appearance of typewriting on Exhibit 155, that it must have been letter-press **[434]** copy?

A. What was that again? Read that over again.

Q. (Read.)

A. I could not tell whether—I am not up on any letter-press copying; have not done any of it.

Q. Do you mean to say that you cannot even tell whether carbon copies have been taken from typewriting after you inspect it?

A. What is that again?

Q. (Read.) I mean, press copy.

A. Well, this looks to me like original. I could not say. It might have been one copy. It might

(Testimony of Ralph P. Cowgill.)

not; not more than one—looks like the original.

Q. But can you tell or can you not tell whether a press copy has been taken from the typewriter of Plaintiff's Exhibit 155?

A. From this there might have been several taken under that.

Mr. McCOURT.—You understand he means copied in a book with water? Pressed in a letter press?

A. I have not used any, so I would not say. I have not used any at all.

Q. So you cannot tell that? A. No.

Mr. LIND.—You have never used a letter-press copy?

A. No, sir, not of the typewriter. I am not a bookkeeper nor a clerk.

Mr. LIND.—Did you ever operate a copying press— A. No, sir.

Q. For copying typewriting? A. Never.

Redirect Examination.

Q. You say, Mr. Cowgill, you can't tell by looking at the writing, within six months of the age, at any time, of the [435] writing—the typewriting?

A. Will you read that again, please?

Q. (Read.)

A. Did I testify to that? I testified that I couldn't tell in that case, didn't I?

Q. I understood you to say that you were not able to tell at any time within six months of the age of a document by merely inspecting it.

A. I didn't intend to testify that. Maybe I did. If it is there I would like to change that, because

(Testimony of Ralph P. Cowgill.)

there is times when you can, you know.

Q. There are times? A. Yes, sir.

Q. When are they?

A. For instance, in that last instrument where I examined there, where it was only made recently. It showed that—the signature showed recently, but he had two kinds of ink up before me. One ink confused me. Which is the older—I told him the name on the other was the older. I was right in that case, but the confusion of inks put me off.

Q. I invite your attention to Government's Exhibit 155, and ask you to compare the signatures of Charles A. Smith and Johanna A. Smith and state whether or not they were signed at the same time, in your opinion.

Mr. LIND.—That is objected to. The witness has not shown himself to be competent.

Mr. McCOURT.—I withdraw the question. I don't think it is important. A. It was.

Q. You think it was.

Mr. UELAND.—I move to strike that out.

COURT.—I don't think that is competent. **[436]**

Mr. McCOURT.—I withdrew the question before he answered it.

COURT.—You can strike that out.

Mr. McCOURT.—Did you put those exhibits in evidence?

Mr. UELAND.—I have no objection to my offers going in evidence, if you wish. I have identified them. You can offer them as your evidence. I don't care to offer any evidence just at this time.

(Testimony of Ralph P. Cowgill.)

You are at liberty to have them.

Mr. McCOURT.—You can keep them and offer them when you get ready.

WITNESS.—There is one thing I wish you would insert in there. That is, my answer to those names on those two papers.

Q. What names?

A. Those last two that I identified the signatures, you know, but not the typewriting, identified right, but when he told her to put the answer down, that was left out of it.

Q. It is not important.

A. I am not testifying as an expert.

Mr. UELAND.—May the records show that "Defendant's Exhibit 'G' for Identification" is—

Mr. McCOURT—Shows amendment of date the 21st day of April, 1910.

Mr. UELAND.—Rather, it is the copy we received with the District Attorney's signature and made at that time.

Mr. McCOURT.—Yes, made at that date.

Witness excused. **[437]**

Testimony of Louis R. Glavis, taken in Case No. 3320, and stipulated to be used in this case as if taken herein.

[Testimony of Louis R. Glavis, for the Government.]

LOUIS R. GLAVIS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Glavis?

(Testimony of Louis R. Glavis.)

A. White Salmon, Washington.

Q. What official position, if any, did you occupy in the years 1908 and 1909?

A. I was Chief of Field Division of the General Land Office with headquarters at Portland part of the time, and part of the time at Seattle, Washington.

Q. Over what did your district extend?

A. It included the State of Oregon, and at a later date, it included Alaska and Western Washington.

Q. Do you recall—you are not in the service now? A. No.

Q. Do you recall, Mr. Glavis, the matter of bringing suits against C. A. Smith and others relative to a large tract of land in Linn County, on behalf of the Government? A. Yes, sir.

Q. You recall that those suits were brought about May 25, 1908? A. Yes.

Q. When was the matter of these lands brought to your attention prior to bringing the suit?

A. During the first part of May, 1908, as I recall, and certain papers were turned over to me as Chief of the [438] Field Division by Mr. Neuhausen; and it was found then that suits had not been barred against a large number of entries, among which were these entries.

Q. What did you do towards ascertaining the condition of the title to those lands, and when, relative to the commencement of the suit, and under whose direction— A. Why—

Q. —or at whose request?

A. —I—about a week, I think, prior to the bring-

(Testimony of Louis R. Glavis.)

ing of the suits, an examination was made of the county records.

Q. What examination was made of the county records?

A. Why, I directed Special Agents to go to the county seats and examine all the records there to ascertain just what transfers had been made, mortgages and everything that the records would disclose; in other words, to make an abstract of the title.

Q. How many agents did you send to Albany for that purpose?

A. Well, I can't recall exactly because we—we investigated the title of a large number of cases, among which were these entries, but as I recall at this time, there were three or four agents that investigated the titles at certain periods.

Q. And did those agents report to you?

A. Yes, sir.

Q. And what did you do with the material which they furnished you?

A. I referred them to the United States Attorney.

Q. Did you yourself make any personal examination of the record in Linn County?

A. No, sir.

Q. Do you remember the name of the agent who had the matter in charge, of the abstracts? **[439]**

A. The one—the first examination of the county records was made by Special Agent Barton, as I recall, and I am sure that there were other agents, but

(Testimony of Louis R. Glavis.)

I can't recall their names now.

Q. You intimate that there was more than one examination? A. Yes, sir.

Q. What were the subsequent examinations made for?

A. After I submitted the abstracts of title to you, you called my attention to a statement made by somebody that there were other transfers—other transfers that had been made, and you suggested that I have another investigation made. And it was at that period that I sent another agent there to check up the first agent.

Q. Now, when was the—when was it brought to your attention that the Linn and Lane Timber Company claimed any interest in these lands?

Mr. UELAND.—Objected to as immaterial.

Mr. McCOURT.—I want to show diligence in ascertaining whether or not there was any claim on the part of the Linn and Lane Timber Company or anyone else that we did not make parties.

COURT.—He may answer.

A. I first heard of the Linn and Lane Timber Company's connection with these entries after the filing of the suits.

Q. Do you remember the date?

A. Why, it was—no, I can't recall the date. I remember sending Special Agent Cowgill down the day after I heard, or the same day I heard, I think I gave him instructions to go down.

Q. I hand you a memorandum which purports to be a letter from Mr. Cowgill; state if that refreshes

(Testimony of Louis R. Glavis.)

your memory as to the date when you had your attention drawn to the Linn [440] and Lane Timber Company's claim. A. Yes, sir.

Q. What was that date?

A. September 10, 1908.

Q. What did you do pursuant to that notice?

A. What is that?

Q. (Read.)

Mr. UELAND.—Objected to as immaterial.

Mr. McCOURT.—I don't know as it has any materiality, except that he went immediately.

Q. Did Mr. Cowgill go and make an examination of the records which he has testified to here, pursuant to your instructions?

A. Yes, sir, I directed him to do that.

Mr. McCOURT.—If the Court please, under the counsel's attitude in this case, it seems to me it will become necessary for me to have the officials of Linn County to come down here with their records to demonstrate there was nothing on them to show that the Linn and Lane Timber Company ever claimed anything so far as the records show. I don't believe that is necessary. We have had a careful examination made and the records disclose nothing.

Mr. GEARIN.—It isn't necessary.

Mr. McCOURT.—I understand that counsel will not concede that unless I can show it. If there is anything in the record and you know about it—

Mr. UELAND.—Have we denied what you have stated in the bill about that? I think our answer is perfectly truthful, and if you examine our answer

(Testimony of Louis R. Glavis.)

I think you will find that there is no denial of that that I know of, **[441]** but it seems to me to come in here and put on record an admission that is so wide in its scope on the spur of the moment, it might contain admissions that we don't intend to make.

COURT.—If the counsel can't agree, you will have to make your case by proof.

Q. Did I ask you, Mr. Glavis, whether or not you made a personal examination yourself?

A. Yes.

Q. You answered you did not? A. Yes.

No cross-examination.

Witness excused. **[442]**

Testimony of L. M. Curl, taken in Case No. 3320, and stipulated to be used in this case as if taken herein.

[Testimony of L. M. Curl, for the Government.]

L. M. CURL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Curl?

A. I live in Albany.

Q. How long have you lived in Albany?

A. 25 years.

Q. What is you business, Mr. Curl?

A. I am an attorney at law.

Q. Do you conduct any business in connection with your law business?

(Testimony of L. M. Curl.)

A. I am principal owner and manager of Albany Abstract Company.

Q. In connection with that Abstract Company, have you yourself performed any of the labor of searching the records of Linn County?

A. I have.

Q. Are you familiar with those records?

A. I think so.

Q. And in such search, have you had occasion to examine documents in typewriting, and written in ink, frequently?

A. I have some knowledge of typewriting.

Q. Was your attention called to a deed from Charles A. Smith to the Linn & Lane Timber Company about the 11th of September, 1908, by Mr. Cowgill, special agent of the Government? **[443]**

A. My attention was called to such a deed. I am unable to state the exact date.

Q. Where was the deed at the time you saw it?

A. It had just been filed with the recorder of conveyances of Linn County.

Q. And was in his possession? A. It was.

Q. Were there a number of other deeds there at the same time, delivered there to the recorder by the same people, or do you recall?

A. I do not remember but the one deed.

Q. Would you know that deed if you saw it?

A. I think so.

Q. I hand you Government's Exhibit 155, and ask you if that is the deed that you refer to, which

(Testimony of L. M. Curl.)

you saw there at that time?

A. That is the deed.

Q. What was the condition of that deed at that time, or rather what was the appearance of that deed at that time, as to being a recently made document, or one of some age?

A. My attention was directed especially to the signatures of the grantors, and as I remember it, it presented a strikingly fresh appearance, while the deed bore date something like two years previous to that time.

Q. Did you have occasion to examine the deed some time later, while it was still in the hands of the recorder? A. I did.

Q. How much later?

A. Well, I could not state exactly; probably two or three weeks or a month after that time. It remained in **[444]** the office some time.

Q. What was its appearance then, at this later examination, as compared with your first examination of it, especially the signatures?

A. Well, I think it was very much the same. possibly the signatures appeared to be a little drier, if anything, than they had before.

Q. You speak of them appearing to be a little drier. What was the condition of the signatures as to dampness, that is, the ink?

A. It appeared to be quite fresh.

Q. Would you make any statement as to how recently the signatures appeared to have been placed there?

(Testimony of L. M. Curl.)

A. Well, I could not tell as to that. The character of the ink might have a good deal to do with that, and I am not sufficiently expert to determine those matters.

Q. I will ask you, Mr. Curl, if you, as manager of the Albany Abstract Company, have made an examination of the records of Linn County?

A. I have.

Q. Especially the offices of recorder of conveyances, county clerk, sheriff's office, assessor's office, with a view to determining when the Linn & Lane Timber Company first appears upon those records as having any interest in these lands in controversy in this suit, or any other lands?

A. I have examined the records for the purpose stated so far as the recorder's office, the clerk's office, and the sheriff's office are concerned. I also examined the assessment-rolls of the county, which rolls are in possession of the sheriff and the clerk. [445]

Q. When does the Linn & Lane Timber Company first appear there upon those records in any capacity?

A. There are three deeds by which they obtained title to lands in Linn County. They were recorded on the 9th of September, 1908, as I recall it. One was from Smith and wife; another was from Swanson; and another was from Nels O. Werner. Those are the only conveyances making title to the Linn & Lane Timber Company in the county.

Q. Does the name of the company appear anywhere else prior to that on the record?

(Testimony of L. M. Curl.)

A. I did not find it in the assessment-rolls except for the year 1909, and I did not find it anywhere else in the records.

Q. Except as you have indicated?

A. Except as I have stated.

Q. In any of those offices you have mentioned?

A. Yes, sir.

Q. Was your attention called to other deeds there at that time purporting to have been made at the same time, and if so, did you make any comparison between the signatures upon them, and the signatures upon this?

A. I do not remember that my attention was called to any deed except the one concerning which I have testified.

Cross-examination.

(Questions by Mr. UELAND.)

Mr. Curl, do I understand you to say that the typewriting on this deed, No. 155, looked to be older than the signatures?

A. I do not remember that my attention was directed **[446]** to the typewriting.

Q. You made the statement that the typewriting looked something like two years old, in your direct examination.

A. If I did, it was an oversight.

Q. You do not mean to be so understood?

A. I do not.

Q. Your attention was merely called to the signatures?

A. My attention was called to the deed. I say,

(Testimony of L. M. Curl.)

my attention was directed to the deed, especially to the signatures.

Q. When you refer to the signatures looking at that time as of recent date, do you refer to all the signatures on the deed—those of the grantors, those of the subscribing witnesses, and that of the notary?

A. I do not have a distinct recollection that any of them bore such a resemblance except the signatures of the grantors.

Q. You have no recollection as to the other signatures, mainly, those of the witnesses, and of the notary looking fresh? A. I do not.

Q. Are you familiar, Mr. Curl, with the different inks in use in this country?

A. No, I am not especially skilled in that line.

Q. You are aware that different inks are in common use, are you not? A. Certainly.

Q. Ink of different qualities, some black, some bluish, some of other use?

A. I find various kinds on the records there.

[447]

Q. I now come to use the term "fading of ink," or of writing, in the sense that it is losing its freshness and becoming older in appearance, so you would understand my use of the terms in that sense, Mr. Curl, do you not? A. I have made no special study.

Q. In examining you from now on, I am going to speak of the fading of ink, and of writing, in the sense of its losing its freshness and becoming older in appearance. You will please understand my use of the terms in that sense, will you not? A. I will.

Q. Have you ever observed, or had occasion to

(Testimony of L. M. Curl.)

observe, whether the different inks fade equally fast?

A. According to my observation, they do not.

Q. They do not? Which ink with which you may be familiar fades quicker than other inks with which you may be familiar?

A. Well, the different grades of black ink will fade quicker than blue or green.

Q. The black fades quicker, you say?

A. Yes.

Q. And what is bluish fades slower?

A. That is my understanding.

Q. Have you had occasion to observe, Mr. Curl, whether writing by a pen with fine point, from which but little ink flows, fades quicker or slower, than writing with a stub pen, from which ink flows more freely?

A. I am not very well skilled in those matters. I could only draw a conclusion, which might be right or wrong. **[448]**

Q. What would your opinion be about that?

A. My opinion is that the heavier stroke would fade more slowly.

Q. Will you now take that exhibit, and tell the Court whether the signatures of the grantors are not in bluish ink, while the signatures of the witnesses and notary are in black?

A. The signatures of the grantors at the time I examined the deed.

Q. Just excuse me. I wish you would just answer the question.

(Question read.)

(Testimony of L. M. Curl.)

A. That was what I intended to state.

Q. That is a fact, is it not?

A. The signatures of the grantors were in blue, a bright blue, or almost a green color. But I do not remember distinctly about the signatures of the witnesses.

Q. Mr. Curl, you have the instrument now before you. Can't you state, from what you see of the instrument now, that the signatures of the grantors are in bluish ink, while the signatures of the subscribing witnesses and the notary are in black ink?

A. The signatures of the witnesses are apparently in black ink, while the signatures of the grantors seem to be considerably faded from what it was before and yet in blue ink.

Q. Do you want to be understood, Mr. Curl, that the signatures on that instrument of the grantors and the signatures of the subscribing witnesses and the notary are in the same ink? [449]

A. I do not so understand it.

Q. You can see even now that they are in different ink, can you not?

A. They appear to be different, yes.

Q. You have no doubt about that, have you?

A. My judgment is it is in different ink.

Q. Yes, they are in different ink, and the difference is that the signatures of the witnesses and the notary are in black, and the signatures of the grantors in bluish ink? A. Yes, sir.

Q. Please look at those signatures again, Mr. Curl, and tell the Court, if you can, whether the sig-

(Testimony of L. M. Curl.)

natures of the witnesses and of the notary are not by a fine pointed pen, while the signatures of the grantors are made by a stub pen?

A. The signatures of the witnesses are apparently made with a finer pointed pen than the signatures of the grantors.

Mr. UELAND.—Will you now please hand the instrument up to the Court, so the Court may see the instrument. (Witness does so.)

Q. From what you have stated, Mr. Curl, you would expect the signatures of the grantors to look fresher and newer than the signatures of the subscribing witnesses and the signature of the notary, would you not?

A. Green ink or blue ink of the kind that was on that deed—

Q. Well, just as you find it on this instrument.

A. Yes, it will last much longer than black ink.

Witness excused. **[450]**

Testimony of Grant Froman, taken in Case No. 3320, and stipulated to be used in this case as if taken herein.

[Testimony of Grant Froman, for the Government.]

GRANT FROMAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Froman?

A. Albany.

Q. How long have you lived there?

A. I lived in Albany about 25 years.

(Testimony of Grant Froman.)

Q. What official position do you occupy in Linn County?

A. I hold the office of recorder of conveyances for Linn County.

Q. Linn County, Oregon?

A. Linn County, Oregon.

Q. How long have you occupied that office?

A. I was elected in 1906, June 1st.

Q. Held the office continuously since that time?

A. Continuously during this time.

Q. You were recorder there in September, 1908?

A. I was.

Q. Were you there personally during that month?

A. Yes, it is my recollection that I was.

Q. I hand you Government's Exhibit 155, and ask you if you were there at the time that was offered for filing, or recording, rather?

A. Yes, sir. I filed that personally. My signature is to it.

Q. Of the date it bears upon its back there, the 9th [451] of September, 1908?

A. 9th of September, 1908.

Q. Do you remember, about the 10th day of September, or the 11th, of that same year 1908, Mr. Cowgill, a special agent of the Government, calling your attention specially to that deed and the signatures thereon?

A. My recollection is there was someone—I don't remember his name—that called my attention to the signature, yes.

Q. You recall that event? A. I do.

Q. What appearance did the instrument have at

(Testimony of Grant Froman.)

that time, the signatures thereon especially, as to being placed there recently, or having some age, etc.?

A. Well, I don't know as I am expert in that line, to testify in behalf as to the age.

Q. I don't ask you to testify as to its age. I ask you to testify as to its appearance.

A. I would say it had a rather fresh look, the signature of the grantor.

Q. Do you recall whether or not you examined the signatures of the witnesses at that time?

A. I do not.

Q. You don't remember that?

A. I don't remember.

Q. Your office, or yourself, furnished me, the United States Attorney, with copies of a large number of mortgages and deeds recently, which have been offered in evidence in this case? A. Yes, sir.

Q. Does the face of the records from which you made copies of mortgages, show satisfactions thereof, if **[452]** they have been satisfied?

A. All that has been satisfied, shows on the face of the original of the copy as it shows of record. And it would also show on those certified copies as it appears of record.

Q. Now, aside from the record of those mortgages, have you made any special examination of your records to determine whether or not any of the mortgages which have been offered in evidence in this case were ever satisfied of record in your county?

A. Yes, I have.

Q. Have any of those mortgages ever been satisfied?

(Testimony of Grant Froman.)

A. None, other than what the certified copies show of record that I have made here.

Cross-examination.

(Questions by Mr. UELAND.)

I understand you to say, Mr. Froman, that the special agent called your attention to the signatures of the grantor on this deed to which you have referred? A. Yes, sir.

Q. But that you do not remember your attention being called to the other parts of the document?

A. No, I don't. I don't remember.

Q. You say that at that time the signatures of the grantors looked to you as being fresh? I think that is the expression that you used? A. Yes, sir.

Q. Do you feel, or did you at that time, feel, able to determine how fresh?

A. No. As I stated, I do not feel as I am expert [453] enough to testify to how long, or anything in that respect, to the age, no.

Q. For aught you could tell at that time, those signatures having not been exposed to the light, they might have been two years old, for all you could tell, might they not?

A. I wouldn't say as to that. Only it looked, as I have stated, it looked as though it had been freshly written.

Q. Yes, but from your experience, you do not feel that you could tell within a couple of years, as to when those signatures had actually been made, do you?

A. Well, it looked to me as though it had been freshly written, as I have stated.

(Testimony of Grant Froman.)

Q. What do you mean by freshly written?

A. Well, I mean within a reasonable time.

Q. And what do you mean by a reasonable time?

A. It looked similar to a signature that had been made with a fountain-pen ink.

Q. Yes, but I want the Court to understand what you mean by fresh, or a reasonable time.

A. Well, I should say something like five or six months—something similar to that.

Q. About five or six months. Have you had occasion to observe that signatures made by a stub pen, from which the ink flows freely so as to make heavy writing—

A. No, I have not.

Q. I had not completed the question. You do not know whether writing from a stub-pen, from which the ink flows freely, retains its freshness longer than writing from a pen with a fine point, from which the ink flows sparsely? **[454]**

A. I am unable to say in regard to that.

Q. You cannot say? A. No, I cannot say.

Q. Look at the signatures to the document that you have now in your hand, to which you have testified. Is it not a fact, Mr. Froman, that the signatures of the grantors, to which you have referred, appear to have been written by a stub-pen, or fountain-pen, with heavier ink than the signatures of the witnesses?

A. I am not expert enough to distinguish the difference whether it was written with a stub fountain-pen or not.

Q. You cannot tell that? A. No, sir.

(Testimony of Grant Froman.)

Q. Can you tell that the signatures of the grantors are made with different ink than the signatures of the witnesses?

A. It looks to be with different ink.

Q. Isn't it a fact that, being in a different ink, the signature of the grantors looks comparatively fresher even now than the signatures of the witnesses?

A. Well, there are so many different inks it is hard to determine on that matter.

Q. Well, you can tell that the signatures of the grantors are in different ink, can you not?

A. It looks to be different ink, yes, sir.

Q. A bluish ink, or bluish tint?

A. It is more of a bluish tint.

Q. While the signatures of the witnesses are in black ink?

A. The signatures of the witnesses are more of a black, yes, sir.

Q. You never had occasion to observe whether bluish ink retains its freshness longer than black ink?

A. No, sir, I could not testify as to that. [455]

[Testimony of Irvine Rittenhouse, for the Government.]

IRVINE RITTENHOUSE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

(Testimony of Irvine Rittenhouse.)

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Rittenhouse?

A. Washington, D. C.

Q. What official capacity do you occupy there, or serve?

A. I am at present Chief of the Division of Accounts in the General Land Office.

Q. What were you doing in January and February, 1905, and prior to that time?

A. I was detailed out here to Oregon with Mr. Burns and Mr. Heney as a clerk in the General Land Office.

Q. Who did you work with while you were here in January, 1905?

A. I worked with both Mr. Burns and Mr. Heney.

Q. Are you a stenographer? A. Yes, sir.

Q. Shorthand reporter? A. Yes, sir.

Q. Were you at that time? A. Yes, sir.

Q. I hand you a check of March 8, 1901, drawn upon the First National Bank of Roseburg for $400, payable to "Yourselves," signed Fred A. Kribs, this check being marked "Government's Exhibit 171 for Indentification" in case 3320, and ask you if you have seen that instrument before?

A. Yes, sir, I have seen this check before.

Q. What was the occasion of your first seeing that check?

A. It was in January or February, 1905, in connection with the taking of some affidavits from Fred A. Kribs that I first saw the check with some others.

(Testimony of Irvine Rittenhouse.)

Q. Was it delivered to Mr. Burns by Mr. Kribs in your presence?

A. Yes, sir, I think it was with some other checks that Mr. **[456]** Kribs delivered.

Q. Did Mr. Kribs make any statement to Mr. Burns in your presence, and which you made note of at the time of delivering that check, as to—in explanation of the check?

Mr. LIND.—That may be answered by yes or no.

A. Yes, sir.

Q. Did you—what did you do in regard to that statement or explanation that Mr. Kribs made?

A. I took it down in shorthand.

Q. And after you had taken it in shorthand, what did you do with it?

A. Immediately transcribed it.

Q. Did you make an accurate transcription of it?

A. Yes, sir.

Q. Was it submitted to Mr. Kribs when you made it? A. Yes, sir.

Q. And what did he do with it?

A. He read over it and signed it, swore to the affidavit—in the form of an affidavit it was gotten up.

Q. Delivered it to you? A. Yes, sir.

Q. I hand you what purports to be an affidavit of Fred A. Kribs, dated the 16th day of January, 1905, and ask you whether or not that is the statement or affidavit which you refer to?

A. This is the statement that he made in connection with this check.

(Testimony of Irvine Rittenhouse.)

Q. Were you present when Mr. Kribs signed it?

A. Yes sir, I saw Mr. Kribs sign that.

Q. Did he sign it on the date it purports?

A. Yes, sir, he signed it on that date.

Q. And how did that date accord with the date at which he [457] delivered you the check, or delivered Mr. Burns the check in your presence?

A. It was the same date, as my recollection is now.

Q. Do you recall, without this statement which you reduced to writing, what Mr. Kribs said at the time, or does reading it refresh your memory as to what he said?

A. Well, the reading of it would refresh my memory, but I recall Mr. Kribs' statement even without the affidavit, as to this check, that is, the general statement. His accurate statement, of course, is in that affidavit.

Q. What did Mr. Kribs say about that—

Mr. LIND.—One moment.

Mr. McCOURT.—Just wait a moment. I will put a little more to it.

Q. I show you what purports to be a stub of a check and ask you if that was delivered with the check?

A. Yes, sir, this stub was delivered with the check.

Q. I will now renew the former question. (Question read as follows: What did Mr. Kribs say about that?)

Mr. LIND.—That, your Honor, is objected to, first

(Testimony of Irvine Rittenhouse.)

as hearsay. The objection is made by the defendants whom we represent. Secondly, any statement made by anyone in anywise connected with the title to this land subsequent to his conveyance of that title and subsequent to the issuance of the patents by the Government on which that title was based, is incompetent and irrelevant. And generally in addition to the other objections, evidence of this character is not responsive to any issue in the case. I repeat again that the evidence is clearly hearsay. What Mr. Kribs or any other person may have said before the Government inquisitor in 1905 is not evidence in this case against our clients. [458]

COURT.—Mr. Kribs is a party to this suit, I understand. It will be evidence against him in case he has any interest, but I don't think it is evidence against your clients. I don't think any declaration that any grantor might have made after parting with the title could bind the objecting defendants; nor is the declaration of a conspirator after the conspiracy is consummated, evidence against anyone except himself. It will be admitted as against Mr. Kribs.

Mr. TANNER.—I would like to make the same objection for my client.

COURT.—If Mr. Kribs has any interest in this controversy this will be competent against him.

Mr. LIND.—Of course, there is no allegation he has any interest in the title.

COURT.—The Government is asking in this suit to recover damages from some of these people for fraud, and for that purpose it will be admitted.

(Testimony of Irvine Rittenhouse.)

Q. (Read as follows: What did Mr. Kribs say about that?)

A. In connection with that check, Mr. Kribs explained that he gave it to Mr. Stratford, or rather, he drew the money on the check for Mr. Stratford—Mr. E. D. Stratford, a Special Agent of the General Land Office, who at the time was investigating some Timber and Stone entries here in Oregon, and gave the money to Mr. Stratford for some land which he owned—he, Mr. Stratford owned— and paid for the land in excess of what Mr. Kribs thought its real value was. In addition to that check Mr. Kribs also stated at the same time that he had paid Mr. Stratford some other money without any consideration outside of—at a time when he was financially embarrassed in some way or other. That, in a general way, is the statement that Mr. Kribs made at that time. **[459]**

Q. Did Mr. Kribs in that conversation or in that explanation state how much in excess of the value of the land he had paid Mr. Stratford?

A. Yes, sir, he said that he considered the land worth about $6.00 an acre and paid him $10.00 an acre for it.

Q. How much of a tract did he say it was?

A. Forty acres.

Q. Forty acres. Do you recall, without looking at this memorandum, the amounts that he had paid Mr. Stratford besides the check?

A. Paid him $300 on two different occasions—$175 one time and $125 another.

Q. Did he make any statement in that connec-

(Testimony of Irvine Rittenhouse.)

tion as to how the—when the payments related, or how they related as to dates, in connection with taking a number of affidavits in connection with land entries?

A. Well, my recollection is that it was at the time Mr. Stratford was investigating these timber and stone entries, or shortly prior to that time, and as to whether the payments were made before or after, I don't recall exactly. Those are about the time Mr. Kribs found out that Mr. Stratford was to make investigation of the claims.

Mr. McCOURT.—I offer the check in evidence.

Mr. LIND.—Same objection so far as the defendants we represent are concerned.

COURT.—Same ruling.

Check marked "Government's Exhibit 66."

Q. Do you remember anything about the exact dates of any of these payments aside from an examination of the memorandum?

A. No, I could not say I would remember the exact date of payments. **[460]**

Q. Will you look at the memorandum and see if that refreshes your memory as to the dates? If it does not, don't answer it.

A. Yes, this memorandum would refresh my memory as to the dates, as stated by Mr. Kribs, of the payments.

Q. Well, aside from the memorandum do you recall the date that he mentioned?

A. No, I could not say that I would recall it without this memorandum.

Q. (Mr. McCOURT.) I offer the memorandum in

(Testimony of Irvine Rittenhouse.)

evidence, if the Court please, in connection with the witness's testimony, to more accurately fix the date of these payments.

COURT.—Is the statement signed by Mr. Kribs?

Mr. McCOURT.—Yes, your Honor.

Mr. LIND.—We make the same objection, your Honor, that we did.

Mr. TANNER.—I desire to object for Mr. Kribs as irrelevant and immaterial.

COURT.—It will be admitted as to Kribs.

Marked "Government's Exhibit 67."

COURT.—What is the date of the patent of the Government in this case?

Mr. UELAND.—As to the 17 claims in controversy in this suit, as I remember it, 8 of the patents are dated July 9, 1902, and the remainder August 12, 1902.

Mr. McCOURT.—I have some letters here from Mr. Kribs to Mr. Tanner relative to the taking of the affidavits in this case especially, which I would like to introduce in evidence to show the connection of Mr. Kribs with the taking of the affidavit.

Mr. TANNER.—I desire to note an objection to these letters and telegrams as privileged communications, passing [461] between attorney and client, with reference to these matters, also as being immaterial and irrelevant. I don't object particularly except as they encumber the record. They are privileged communications as between attorney and client with reference to these matters.

Mr. McCOURT.—These letters were delivered

(Testimony of Irvine Rittenhouse.)

into the hands of the Government, as I understand it, by Mr. Tanner, and I don't know that I am prepared to say that that objection that they are privileged communication, is not well taken. They are letters to Mr. Tanner showing the progress of the taking of the affidavits and the—

Mr. LIND.—Is that a proper statement? If they are not properly in the records we don't want them there by way of the District Attorney.

COURT.—You might submit them to me and I will reserve my ruling.

Mr. LIND.—I ask to have that statement stricken out, for the time being.

COURT.—The statement will be stricken out. If it is a privileged communication it should not be in the record.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Rittenhouse, how long were you here in January or February of 1905?

A. I was here the whole month of January and I was here until the 18th day of February. I think that was the date that I left Portland.

Q. What was your—what was the general character of the work—your work, during that period?

A. I was taking charge of the evidence as it was collected in connection with the land fraud cases that were being put [462] before the Grand Jury at that time. Was taking affidavits of various people in connection with the investigations, and acting as stenographer for both Mr. Heney and Mr. Burns; had charge of all the documents and records.

(Testimony of Irvine Rittenhouse.)

Q. Were you present when a great many timber and stone entrymen were examined?

A. Yes, sir, I took all the affidavits.

Q. You took all the affidavits?

A. Yes, sir.

Q. Were you present when other witnesses were examined?

A. Yes—not in the grand-jury room, though.

Q. In whose office did you hold forth?

A. In Mr. Heney's room over here in the hotel—in the Portland Hotel.

Q. He was the representative of the Attorney General's Office for the Government here, was he?

A. Yes, sir, he was Special Assistant to the Attorney General at that time, I think. No, no; at that time, he was United States Attorney. He was appointed to succeed Mr. Hall.

Q. He was the United States—acting United States Attorney of this district at that time?

A. Yes, sir.

Q. Who else participated in the work in which you and he were engaged?

A. William J. Burns and—

Q. Who was William J. Burns?

A. Who is he?

Q. Yes. A. Well—

Q. He is on the way here we were told by the District Attorney the other day, and we want to know who he is—what manner of man.

A. I think he is now—he runs a private detective agency in New York or Chicago. [463]

Q. What was his capacity, official capacity at

(Testimony of Irvine Rittenhouse.)

that time, if he had any?

A. He was a Special Agent of the General Land Office at that time.

Q. For what purpose?

A. Why in connection with these land fraud investigations here.

Q. He was a detective? He was the detective—chief of detectives for the Government, was he?

A. He was appointed a Special Agent for the General Land Office.

Q. What did he do? What was the character of his work?

A. What was the character of his work here?

Q. Yes.

A. He had—he supervised various other Special Agents and would interview entrymen, gather evidence, one thing and another.

Q. For what purpose did he interview the entrymen?

A. Why, to determine whether or not there was any fraud committed, and present such evidence as was secured before the Grand Jury.

Q. What was the object of taking the affidavits? Why were the affidavits taken?

A. I suppose for the same purpose that they keep books in business houses; so they will know what their business is.

Q. Couldn't that have been served by taking a statement of the witnesses.

A. You mean without having them swear to it?

Q. Yes. A. Why, I suppose it could.

Q. Were the witnesses sworn before they were

examined or afterwards? [464]

A. Afterwards; that is—

Q. Who prepared the affidavits?

A. I would take their statements down in shorthand and they were sworn before they made the statement and then they were sworn to the affidavit when it was written out.

Q. You took the statement down in shorthand?

A. Yes, sir.

Q. By way of question and answer?

A. Well, sometimes that way, and then some made general statement.

Q. And you reduced, when questions and answers, when that was the course pursued, you reduced the questions and answers to a narrative form?

A. No, not necessarily in narrative form. If questions and answers, I would take it that way, but the entryman was asked to make a statement of his connection with what was being investigated, and he would make it and I would take it and transcribe it.

Q. Then, the affidavits are your version of the statement?

A. Oh, no; no, indeed. They are the statement of the affiants, the people who made the statements; not my version.

Q. Do you say that the affiants dictated the statements the same as I would dictate a letter to my stenographer?

A. Well, not exactly that way. They would—they wouldn't start off like you would start off

(Testimony of Irvine Rittenhouse.)

dictating a letter, but they would make a statement concerning their connection and I would take the statement down.

Q. And then you would reduce that to writing, which is your version of their statement, rather than *haec verba* statement of the affiant, isn't it?

A. No, it wasn't my version, because I took down what they said, and they would always read it over themselves before [465] they would sign it and swear to it. It was their own statement. I didn't twist their language around.

COURT.—Let me see that affidavit.

Q. Now, the grand jury was in session at this time? A. Yes, sir.

Q. Were—was there any talk between W. J. Burns or Heney in your presence to these affiants, what the effect would be if they did not make statements or sign affidavits?

A. No, I don't recall any statements as to that effect.

Q. Do you recall of either Burns or Heney using violent language to any of these affiants?

A. No, sir.

Q. Never? A. No, sir.

Q. Never anything said by either about their being sent to State's prison?

A. No, sir, nothing at all like that. That is—that was—they never said anything about State prison. That was all in the minds of the entrymen themselves.

Q. Anything said about their cases being taken

(Testimony of Irvine Rittenhouse.)

before the grand jury? A. No, sir.

Q. Nothing? How did these affiants come to be there? A. They were subpoenaed.

Q. By whom?

A. By the court to appear before the grand jury.

COURT.—By whom?

A. By the court.

COURT.—What do you mean by the court?

A. Well, I don't know—the court. The Clerk of the Court would issue a subpoena on the request of the United States Attorney.

Q. Were they brought before the grand jury, any of them? **[466]**

A. I think they were all before the grand jury —all those whose testimony was needed before the grand jury.

Q. All those who signed affidavits—were they taken before the grand jury?

A. I don't know that all were. There may have been a preponderance of evidence, to take all before the grand jury. All that was needed was taken before it, and the others were supposed to be used at the trials.

Q. Now, as a matter of fact, Mr. Rittenhouse, didn't you hear statements made by Mr. Burns to the effect that unless affidavits were subscribed and signed by affiants their cases would be taken before the grand jury?

A. No, sir, I never heard Mr. Burns nor Mr. Heney make any such statement. I have heard lots of talk accusing them of doing it, but I never heard them make any such statements.

(Testimony of Irvine Rittenhouse.)

Q. None were made before you?

A. No, none before me and I will state that I was always with Mr. Burns, as a rule, when he was with these people.

Redirect Examination.

Q. That affidavit of Mr. Kribs there, did he dictate that? A. Mr. Kribs?

Q. Yes. A. Yes, sir.

COURT.—What do you mean, Mr. Rittenhouse, by dictating? Is that Kribs' language?

A. This is Mr. Kribs' language all except this first part there.

COURT.—Did he make that dictation the same as he would dictate a letter to you, or was that prepared and then signed by him afterwards?

A. No, sir, I took this down in shorthand as Mr. Kribs' statement. [467]

COURT.—That is Mr. Kribs' language?

A. Yes, sir, this is Mr. Kribs' language.

Q. Did you take any other affidavit there from Mr. Kribs about that time?

A. Yes, sir, I took quite a number. I think two or three or four.

Q. Did he exercise considerable care before signing them?

A. He did. He would read over them two or three times and have some changes made or something added. He didn't want it just the way it appeared.

Witness excused. [468]

Portland, Oregon, Tuesday, May 3, 1910,
2 P. M.

[Testimony of T. R. Sheridan, for the Government.]

T. R. SHERIDAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Sheridan?

A. Roseburg.

Q. Where did you say you live?

A. Roseburg.

Q. How long have you lived there?

A. Forty-seven years.

Q. What has been your business for the past several years?

A. The last 19 I have been President of the First National Bank.

Q. Of Roseburg? A. Roseburg.

Q. In the years 1899 on up to the present time, have you been actively engaged in conducting the business of the bank? A. More or less.

Q. And what capacity were you serving in in 1900 and 1901?

A. Well, as President and receiving and paying.

Q. You stood at the window—

A. Yes, in case—

Q. —and had general control of all the business of the bank? A. I did.

Q. Do you know Fred A. Kribs? A. I do.

Q. When did you become acquainted with him?

A. About 1900, I think.

Q. And he had an account there in your bank?

A. He did.

(Testimony of T. R. Sheridan.)

Q. You have recently gone over that account, have you not?

A. In a way, yes. [469]

Q. Yes?

A. With my cashier—bookkeeper.

Q. And have you made a transcript of the account of Mr. Kribs, and the transactions of Mr. Kribs with that bank from the time he opened the account down to 1904, or such a matter?

A. Well, we have partially checked up the list that was furnished us.

Q. Do you recall whether or not you were the man who attended to the business so far as Mr. Kribs' account was concerned, in 1900?

A. Please read that.

Q. (Read.) A. Not individually.

Q. I want to call your attention to a couple of checks—memorandum checks—and ask you—being Government's Exhibits 2 and 3—in whose handwriting in the first place, the memorandum of check, is that? A. My own.

Q. In your handwriting? A. Yes, sir.

Q. What part of it is in your handwriting?

A. All of it.

Q. Well, those endorsements across the face there I refer to?

A. Oh, in lead pencil, in dark, is all my own.

Q. Now, from whom did you secure the authority to—or what was—what charge was made of those sums of money? Against whose account were they charged? A. Mr. Kribs'.

(Testimony of T. R. Sheridan.)

Q. Now, from whom did you receive authority, if from anybody, to draw these checks for the purposes indicated on them? **[470]**

A. Mr. Kribs.

Q. Prior to the time that you made the payments? A. Yes, sir.

Q. Do you recall the incident itself?

A. I do not.

Q. Except as you see it upon them?

A. As I see it there.

Q. The figures there, the words, "On bank's acct." and "On new bank ledger." Did you make those writings upon them? A. No, sir.

Q. And the words there "Cop. on C. A. S. deal."

A. That is not my writing.

Q. I last referred to Gover*mn*ent's Exhibit 3. Now, the words "Cop. in C. A. S. acct.," and "On bank's acct.," and "On new bank ledger." State whether or not those were made in the bank.

A. They were not.

Q. Were they upon the checks when delivered to Mr. Kribs by you?

A. I couldn't swear to that; I think not.

Q. Was there anyone in your office who wrote in a handwriting similar to this?

A. I don't recognize it.

Q. Do you know Mr. Kribs' handwriting?

A. Yes, sir.

Q. State—have you often seen him write?

A. Very often.

Q. Can you state whether or not the words "Cop. in C. A. S. acct." are in his handwriting?

(Testimony of T. R. Sheridan.)

A. I couldn't swear that it was.

Q. You don't know? A. No. [471]

Q. The words upon Government's Exhibit No. 2, "Paid Land Office for 10 claims." Does that recall to your mind the circumstances or the direction that was given you as to that purchase?

A. It does not.

Q. To whom was this money paid, or to what account was this money paid that is represented by these checks, if you know?

A. Well, other than they appear on the face, I couldn't say. The face shows that I paid it to the Land Office.

Q. Do you remember whether or not that payment to the Land Office was made by mere transfer of that sum of money to the account of the receiver, or whether or not the coin was paid to the receiver?

A. I couldn't swear.

Q. What would have been the ordinary method of complying with Mr. Kribs' direction there?

A. I imagine that the money was paid.

Q. Did the receiver carry an account in your bank at that time? A. Yes, sir.

Q. Do you recall how frequently you delivered to Mr. Kribs his cancelled checks, or rather, how often you balanced his deposit book?

A. No; the bookkeepers did that. I had nothing to do with that part of it.

Q. That was done at the—

A. In the usual course.

Q. —request of the depositor, or was his book called for and—

(Testimony of T. R. Sheridan.)

A. No, I am under the impression that it was statements, and the bookkeeper made the statement up whenever a sufficient [472] number of checks were on hand. Sometimes once a month, sometimes twice; sometimes oftener.

Q. But in—the intervals would not be further than a month apart in Mr. Kribs' case?

A. Well, I couldn't swear to that because we often let them run longer than that. That is quite a while ago.

Q. Your bankbook, does it have any memorandum upon it which would indicate the dates at which balances were struck? A. Yes, sir.

Q. That is, the deposit books were balanced?

A. Yes, sir.

Q. You can tell then by looking at the—

A. Book.

Mr. McCOURT.—The testimony of this witness can be used in both cases, can it not; that is to say, as far as it applies?

Mr. LIND.—Yes.

Q. The certificate, or rather, the checking of which you spoke—I hand you a typewritten memorandum here and ask you if that is the paper you used to check your books with?

A. Well, yesterday afternoon we went over this partially. We did not have the time after I returned home, to go over it, but so far as we went it is all right.

Q. It was correct? A. Yes, sir.

Q. How far over it did you get?

A. I think we got to the second page only, Mr. McCourt.

(Testimony of T. R. Sheridan.)

Mr. LIND.—What was the answer?

A. I think it was the bottom of the second page or thereabouts. It might have been—

Mr. McCOURT.—I may state that that instrument was **[473]** made up from the checking of the accounts which we made, and that it was sent to Mr. Sheridan to make a more complete check, but he was out of town and did not get back until yesterday morning, and I urged him by telephone to come back here before he could get through the thing. I don't know whether counsel want to take our checking for it or not.

Mr. LIND.—Are the books here from which you did the checking?

Mr. McCOURT.—Yes, they are all here.

Q. Before offering this, do you recall that Mr. Kribs kept an account which was designated No. 1 and No. 2 in your book?

A. I do when I look in the book. I can't remember other than that.

Q. Do you recall that the checks which were drawn—or do you recall how the checks were—how you determined whether or not the check was on No. 2 or No. 1?

A. Not at this time; it is too long. I cannot recall.

Q. Well, let me try to refresh your memory. Do you recall that the way you determined that was that checks on account No. 2 were marked No. 2 and no designation marked upon those on account No. 1?

A. Possibly that may be, but I can't remember at this time.

(Testimony of T. R. Sheridan.)

Mr. McCOURT.—Is Mr. Kribs here?

Mr. LIND.—No, but we will find out.

Mr. McCOURT.—Find out whether or not that is a fact.

Q. Now, will you look at this ledger here and tell the Court when the book, Mr. Kribs' deposit book, was balanced subsequent to October 10, 1900? **[474]**

Mr. LIND.—Which account was that you are inquiring about?

Mr. McCOURT.—That is No. 1, the C. A. Smith account.

A. Account No. 2? What was the question?

Q. Account No. 1? A. No. 1.

Q. After October?

A. The first balance seems to be the 11th day of July, 1900.

Q. I want the date of balances subsequent to October 10th? A. For that year?

Q. Yes.

A. Just subsequent or all of them?

Q. Just subsequent to October 10th. Well, you might as well give them all while you are at it.

A. The 14th of July, and the 13th of August, and the 17th of August; on the 11th of September. That is all until December.

Q. Well, give the next one.

A. December 8th. More?

Q. One more. A. And December 28th.

Q. I guess that ought to be enough. All 1900?

A. 1900.

(Testimony of T. R. Sheridan.)

Q. At the time such balances were struck in the deposit book, were the cancelled checks delivered?

A. Yes.

Q. To the depositor? A. Yes.

Mr. McCOURT.—Now, I understand that counsel will admit that drafts forming the source of account No. 1 were from C. A. Smith?

Mr. LIND.—I will admit the facts in regard to that. **[475]** If that is so it will be admitted, and we can find out whether it is so, but I don't know now. I don't question for a moment but that the drafts were sent by C. A. Smith to Mr. Kribs, or probably the C. A. Smith Lumber Company, but what the particular drafts were, I don't know.

Mr. McCOURT.—I understand you to admit that whether they were from the C. A. Smith Lumber Company or upon the Bank of Minneapolis, they were C. A. Smith's money.

Mr. LIND.—Yes, but what particular draft we don't know.

Mr. McCOURT.—You admit that C. A. Smith was a party in interest and that he was furnishing the money?

Mr. LIND.—Yes, he was a party in interest.

Mr. McCOURT.—Now this certificate—what do you desire in relation to that? Do you want to check the book itself before it is put in?

Mr. LIND.—Or check with Mr. Kribs or someone who knows.

Mr. McCOURT.—That may be done this evening. We will put this certificate in now, until you get a

(Testimony of A. R. Greene.)

chance to check it.

McCOURT.—It is possible if we do it to-night, we may get Mr. Sheridan's assistance.

No cross-examination.

Witness excused. **[476]**

[Testimony of A. R. Greene, for the Government.]

A. R. GREENE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Greene?

A. My home is in Portland.

Q. Were you formerly acting in an official capacity with the Government of the United States?

A. Yes, sir.

Q. During what period was that?

A. Well, I was in the employ of the Government covering several periods.

Q. Well, give us the period—you were in the Government service from 1900 on up till 1905?

A. Yes, sir.

Q. And later? A. Yes, sir.

Q. And during the period between 1901, or 1900, say, and 1904, in what capacity were you acting?

A. I was a Special Inspector for the Secretary of the Interior.

Q. In that respect, you were a sort of confidential adviser of the Secretary, were you not?

A. Yes, sir, in regard to the matters of which I had charge.

(Testimony of A. R. Greene.)

Q. You were the only man occupying the position, were you not, at that time?

A. No, sir. There were four. The law provided for four. I was one of the four.

Mr. LIND.—In this field—in this same field?

A. I was the only one in this field.

Mr. McCOURT.—He was the only one in this field. [477] There were four in the United States.

Q. During what period were you interested, or looking after matters in Oregon?

A. From January or February, 1902, until the fall of 1905, I think.

Q. Did you have any special assignment during that time, or any special cases?

A. Yes, sir. I had a number of special assignments.

Q. Were you ever assigned to investigate the cases in controversy in this case and the case which is being tried along with it?

A. Well, I don't know that I know what case is being tried along with this. I don't know which two cases you refer to exactly, Mr. McCourt.

Q. Well, I refer to the entries known as the McKinley entries up in Linn County, and entries made by the Mealey boys up there.

A. The Sweet Home entries?

Q. Yes, the Sweet Home entries.

A. No, sir, I was never specially assigned to that.

Q. Did you, on or about the 10th day of March, 1902, make any report to the Secretary in which you referred to those claims?

(Testimony of A. R. Greene.)

A. I wrote a letter to the Secretary on, I think it was the 10th of March, 1902, in which, among other things, I called his attention to conditions as I understood they were prevailing up there with reference to those entries.

Q. What was the purpose of that report; that is, the general purpose of it?

A. Well, it was to give the Secretary a general idea of conditions in regard to the public land entries in the State of Oregon. The letter related to a number of **[478]** cases.

Q. Had you any personal information at that time relating to these claims—the Sweet Home claims? That is, had you made any investigation of them?

A. No, sir. At the time I wrote this letter, I had made an examination of the records at Albany and Oregon City, I think it was.

Q. And your report was made entirely from the records as they appear, or practically entirely from them?

A. Almost altogether from the records, yes, sir.

Mr. McCOURT.—What parts of this report did you wish to have introduced? There is some of it does not refer to this at all.

Mr. LIND.—That portion of it which the witness marked in our presence the other day might be read into the record, and also the portion of the abstract containing these entries, if that is your pleasure.

COURT.—I suggest that the District Attorney read it, and let the stenographer take it, and not let

(Testimony of A. R. Greene.)

that book go in evidence.

Mr. McCOURT.—Yes. Mr. Greene does not want it to go in evidence, because there are some private matters in it.

COURT.—Very well. Read to the stenographer that portion you desire to have in.

Mr. McCOURT.—(Reading:)

"DEPARTMENT OF THE INTERIOR.

Oregon City, Oregon, March 10, 1902.

The Honorable

The Secretary of the Interior,

Washington, D. C.

Sir:—

I have the honor to state that owing to excessive and [479] long continued rains which have rendered the roads in the Siletz country practically impassable, I have not been able to make the contemplated examination of entries in that part of the State and have devoted my time to a study of conditions in more accessible localities. Hence this report will be somewhat of a general character.

The following facts have been elicited in regard to the entry of a valuable body of fir timber in the extreme eastern part of Linn county, adjoining the Cascade Forest Reserve and situated partly in the Oregon City and partly in the Roseburg land district: About two years ago a man named John A. Willd, representing a lumber company of Minnesota, had these lands 'cruised' and through his instrumentality they were entered, principally under the Timber and Stone Act. The financial agent of this man was

Frederick A. Kribs of Portland, Oregon. The cruiser was Horace G. McKinley, who was also the locator and induced the entrymen to take up the lands, representing to them that a mill company stood ready to take them off their hands as soon as final proof could be made and that he wanted only such applicants as would be ready to sell when the time came. Pursuing this policy, McKinley secured a number of men and women from among the class whose living is precarious, largely from the saloons and rooming houses and around the depots and wharves of the towns along the valley and the lands were entered, McKinley appearing in a number of cases as a witness.

In 28 of the 67 cases referred to in this connection, the lands were mortgaged to Kribs on the day of final proof; eight tracts were mortgaged to him one day after proof and one tract three days after proof. Twelve tracts were deeded straight to Kribs on the day of proof and 28 tracts were **[480]** deeded to Willd within five days after proof. One entryman, James H. Scott of Albany, Oregon, mortgaged to M. E. Watson on the day of final proof.

Ten commuted homesteads situated in the vicinity and chiefly valuable for their timber (as are all homesteaded lands west of the Cascade Range at this time) have an interesting history when the records in the office of County Recorder are placed in juxtaposition to the records of the local land office. Every one of these entrymen had mortgaged his homestead before the day of final proof and the mortgages

were matters of record at that time: One, four days before; two, five days before; three, eight days before; two, eleven days before and two thirteen days before final proof.

Attached to this report are three sheets containing correct transcripts from the records of the local land offices at Oregon City and Roseburg, and the office of the County Recorder of Linn County, Oregon. These will enable you to trace the history of any given tract of land from the time of its final entry to the time of its mortgage or sale. Only a few tracts have been presented in this case for the reason, that as it might be desired to institute action against the parties, it would be important to do so before the issuance of patent. In this connection I desire to call your attention to the fact that patents were issued seven months after final proof for 13 of the tracts herein, whereas for 49 tracts herein, which were passed to final proof from 18 to 23 months ago, the patents have not yet been issued. However, they may have been held up to await the conclusion of proceedings to test the validity of title.

Referring again to the cases where Kribs became mortgagee and Willd purchaser, immediately after final proof, a strong presumption of collusion is raised. Take the entry of **[481]** John Harrison of Brownsville, for example. His final proof certificate is numbered 8235 and dated May 16, 1900. On the same day he mortgaged to Kribs for $600 and the day following he deeded to Willd for $1.00. An isolated case of this kind might occur in good

faith and honesty possibly, but when it comes to a great number of cases of precisely similar facts, it is quite another matter. Kribs paid out on mortgages in three weeks in April and two weeks in May, 1900 the sum of $18,600.00 for lands passed to final proof immediately preceding the date of the mortgages and immediately following these dates the same lands were deeded to Willd for $31.00, just enough to comply with the law regarding transfers of realty. The fact that the consideration was merely nominal in the cases of the sales, ought it seems to me, to have weight in a judicial consideration of the matter. Also, the fact that public opinion has become debauched to the extent of hostility to an honest enforcement of the land laws in this part of the country should not deter our local officers from a vigorous effort to punish offenders.

There ought to be less difficulty in proceeding against the homesteaders herein named who mortgaged their claims prior to final proof. These are matters, however, for Departmental determination."

I think that is all.

Mr. LIND.—Is there any recommendation at the end?

Q. Is that the only reference to those claims?

A. I don't remember. I have not read the letter for years, or for some time, and I don't remember whether there was any recommendation with reference to those entries or not. The recommendation, if there was one, would be right at the end of the letter.

Mr. McCOURT.—There seems to be a little more that wants to go in here. (Continues reading.) [482]

"The foregoing are not isolated and exceptional cases as will be seen from the consecutive numbers of the final certificates, but comprise nearly every entry for the dates given. This is significant as showing the extent of the questionable practices before these land offices.

A complete remedy is not to be hoped for but the evils might be checked if our land officers and special agents would be more alert to the frauds. It cannot be denied that at present the Government is held in contempt by the land grabbers. This is largely in consequence of a failure on the part of the land officers to comply with the law and regulations. For example, the oath is administered in a slighting and careless manner as though it was an obsolete formality; the statute for the punishment of perjury—Sec. 5392—printed, at the foot of the application blanks under the Timber and Stone law, is seldom read to the entryman; tracts other than those applied for originally, are substituted on the spot by the applicant, for tracts ascertained to be taken, and the land officer says with a smiling assent, 'Of course you have been over that tract also,' when it may be in fact true that he never set foot in the State until that morning when he came across the Columbia from Washington. When I have called the attention of the officers to these things they have said to me, 'Life is too short to run

(Testimony of A. R. Greene.)

down all the facts in these little cases; I have long ago ceased to have any confidence in human nature.' In other cases the Receiver has accepted a lump sum of money for a number of timber entries which he had every reason to believe were being made in the interest of a lumber syndicate. When I called his attention to what I had heard in regard to this case, he said, 'No sir, we made him separate it right there and have every man pay his share.' [483] It is a common thing to hear the Receiver advise entrymen that 'if they discover that their lands are more valuable for timber than for agriculture they can relinquish and take it under the timber and stone act, which is simply an encouragement for these men to hold it as a homestead until they can find a purchases for the timber and make arrangements for the purchase money.' "

Mr. McCOURT.—Now, I don't catch any formal recommendation.

Mr. LIND.—I think the Secretary says, in commenting on it, that there was.

Mr. McCOURT.—That there was a recommendation?

Mr. LIND.—Yes. Perhaps Col. Greene remembers, or can find it.

Q. Do you recall, Colonel? Look at it and see if you can get it.

A. I don't think there was any recommendation with reference to the cases now under consideration.

Mr. McCOURT.—Are you sure the Secretary's decision states it?

(Testimony of A. R. Greene.)

Mr. LIND.—I am not sure, but that is my recollection.

Mr. McCOURT.—I have a memorandum here, made by you, Colonel, in which you said your recommendations were in relation to township 8 South of 9 West.

A. Well, that is over in the Siletz country, isn't it?

Q. Yes.

A. I find here I made a specific recommendation with reference to some lands in the Sil*tz* country. I was just reading it. I do not find anything further as applying to the cases involved in this suit. I went from there to several other cases, and wound up in the string of alleged fraudulent surveys in the Sil*tz* country.

Q. Is this a copy, or the sheet that you sent with it describing [484] the lands?

A. Yes, sir. Yes, this is a blank I had prepared for the purpose, and contains a list of the entrymen and the record, as I took them from the books at the County Recorder's Office at Albany.

Mr. McCOURT.—Do you want that to go in with it?

Mr. LIND.—It encumbers the record.

Mr. McCOURT.—The record may show that the list mentioned as sent in by Colonel Greene is list of names of entrymen, number of entrymen, date made, and date when proof was made, and the date of the conveyances, both mortgages and deeds.

Mr. LIND.—In this suit and in the other?

Mr. McCOURT.—Yes, in this suit and in 3319.

(Testimony of A. R. Greene.)

And also other lands not involved.

Mr. LIND.—And it is the same report that is referred to in the Secretary's decision later on.

Cross-examination.

(Questions by Mr. LIND.)

Colonel, you reported direct to the Secretary of the Interior? A. Yes, sir.

Q. Not by way of the General Land Office?

A. No, sir.

Q. You were in a sense the personal representative of Secretary Hitchcock? A. Yes, sir.

Q. Where did you get your data for the statements contained in the report just read into the record? I mean aside from those that you obtained from the county records?

A. A part of the information was obtained from officers [485] in the courthouse, and a part from citizens of Albany, and a part from citizens in Roseburg and Oregon City.

Q. Did you at that time know Mr. Stratford, a Special Agent in the field here?

A. Only by reputation. I think I never had met him. Afterwards I met him, and he said he knew me, but I didn't recall when I had ever met him.

Witness excused. [486]

U. S. Exhibit No. 155.

(Govt. Exhibit 59.)

Linn Co.

THIS INDENTURE, Made this 4th day of June, in the year of our Lord one thousand nine hundred and six, between Charles A. Smith and Johanna A. Smith, his wife, of the County of Hennepin and State

of Minnesota, parties of the first part, and ———— Linn and Lane Timber Company, a corporation, of the County of Hennepin and State of Minnesota, party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of $80,000.00 Dollars, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns, Forever, all the tracts or parcels of land lying and being in the County of Linn and State of Oregon, described as follows, to-wit:

All of Section numbered Sixteen (16), the Northeast quarter (N. E. 1/4) the Northeast quarter of the Northwest quarter (N. E. N. W.) the South Half of the Northwest quarter (S. 1/2 N. W.) and the South Half (S. 1/2) of Section Thirty-six (36), in Township Twelve (12) South, Range Three (3) East of Willamette Principal Meridian.

All of Section numbered Thirty-six (36) in Township Twelve (12) South, Range Four (4) East of Willamette Meridian.

The Northeast quarter (N. E. 1/4) the North Half of the Southwest quarter (N. 1/2 S. W.) the Southwest quarter *od* the Southwest quarter (S. W. S. W.) and the Northwest quarter of the Southeast quarter (N. W. S. E.) of Section Ten (10), the North Half of the Southwest quarter (N. 1/2 S. W.) of Section Sixteen (16), in Township Thirteen (13) South, Range One (1) [487] East of Willamette Principal Meridian.

The Southwest quarter (S. W. ¼) of Section Four (4), the South Half of the Northeast quarter (S. ½ N. E.) and the North Half of the Southeast quarter (N. ½ S. E.) of Section Six (6), the North Half of the North Half (N. ½ N. ½) the Southwest quarter of the Northwest quarter (S. W. N. W.) and the East Half of the Southeast quarter (E. ½ S. E.) of Section Eight (8), the North Half of the Northeast quarter (N. ½ N. E.) the Southwest quarter of the Northeast quarter (S. W. N. E.) the North Half of the Northwest quarter (N. ½ N. W.) the Southeast quarter of the Northwest quarter (S. E. N. W.) the North Half of the Southwest quarter (N. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Fourteen (14), the North Half of the North Half (N. ½ N. ½) of Section Twenty (20), the Southwest quarter of the Southwest quarter (S. W. S. W.) the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Twenty-six (26), the West Half of the Northeast quarter (W. ½ N. E.) the East Half of the Northwest quarter (E. ½ N. W.) the Northeast quarter of the Southwest quarter (N. E. S. W.) and the West Half of the South east quarter (W. ½ S. E.) of Section Twenty-eight (28), the Northeast quarter (N. E. ¼) of Section Thirty (30), the West Half of the Northwest quarter (W. ½ N. W.) and the North Half of the Southwest quarter (N. ½ S. W.) of Section Thirty-two (32), the Southwest quarter (S. W. ¼) and the South Half of the Southeast quarter (S. ½ S. E.) of Section Thirty-four (34), and the Northeast quarter (N. E. ¼) of Section Thirty-six (36) in Township Thirteen (13) South, Range Two (2) East of Wil-

lamette Meridian.

The Northeast quarter (N. E. ¼) the West Half of the Northwest quarter (W. ½ N. W.) the Southeast quarter of the Northwest quarter (S. E. N. W.) the West Half of the Southwest quarter (W. ½ S. W.) the Southeast quarter of the Southwest quarter (S. E. S. W.), the Northeast quarter of the Southeast quarter (N. E. S. E.) and the South Half of the Southeast quarter (S. ½ S. E.) of Section Two (2), the Northeast **[488]** quarter of the Southeast quarter (N. E. S. E.), the South Half of the Southeast quarter of Section Four (4), the Northwest quarter of the Northeast quarter (N. W. N. E.), the Southeast quarter of the Northeast quarter (S. E. N. E.), the Southeast quarter of the Northwest quarter (S. E. N. W.), the Northeast quarter of the Southwest quarter (N. E. S. W.), the South Half of the Southwest quarter (S. ½ S. W.), the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Eight (8), the Southwest quarter of the Northwest quarter (S. W. N. W.) and the West Half of the Southwest quarter (W. ½ S. W.) of Section Nine (9), the North Half of the Northeast quarter (N. ½ N. E.) the East Half of the Northwest quarter (E. ½ N. W.) the Southwest quarter (S. W. ¼) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Ten (10), the North Half of the Northeast quarter (N. ½ N. E.), the East Half of the Northwest quarter (E. ½ N. W.) and the Northeast quarter of the Southwest quarter (N. E. S. W.) of Section Twelve (12), the North Half (N. ½) the North Half of the South Half (N. ½ S. ½) and the South Half of the Southwest quarter (S.

½ S. W.) of Section Sixteen (16), the West Half of the Northeast quarter (W. ½ N. E.) the Northeast quarter of the Northwest quarter (N. E. N. W.) the South Half of the Northwest quarter (S. ½ N. W.) and the Northwest quarter of the Southwest quarter (N. W. S. W.) of Section Eighteen (18), the Southwest quarter of the Northwest quarter (S. W. N. W.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Thirty-four (34) in Township Thirteen (13) South, Range Three (3) East of Willamette Meridian.

Lots One (1), Two (2), Three (3) and Four (4), the Southeast quarter of the Northeast quarter (S. E. N. E.), the Southwest quarter (S. W. ¼) the Northeast quarter of the Southeast quarter (N. E. S. E.) and the South Half of the Southeast quarter (S. ½ S. E.) of Section One (1), all of Section Two (2), the West Half (W. ½) of Section Six (6), the Southeast quarter of the Southwest quarter (S. E. S. W.) the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Eight (8), the North Half of **[489]** the Northeast quarter (N. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E.) the Northeast quarter of the Northwest quarter (N. E. N. W.) and the South Half of the South Half (S. ½ S. ½) of Section Ten (10), the East Half of the East Half (E. ½ E. ½) and the Northwest quarter (N. W. ¼) of Section Twelve (12), the Northeast quarter of the Southwest quarter (N. E. S. W.) the North Half of the Southeast quarter (N. ½ S. E.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section

Thirteen (13), the Northwest quarter (N. W. ¼) of Section Fourteen (14), all of Section Sixteen (16), the Northeast quarter (N. E. ¼) of Section Twenty (20), the Northwest quarter (N. W. ¼) of Section Twenty-one (21), the North Half of the North Half (N. ½ N. ½) of Section Twenty-two (22), the Northeast quarter of the Northwest quarter (N. E. N. W.), the South Half of the Northwest quarter (S. ½ N. W.) and the Northwest quarter of the Southwest quarter (N. W. S. W.) of Section Twenty-three (23) in Township Thirteen (13) South, Range Four (4), East, W. M.

Lots Three (3) and Four (4), the East half of the Southwest quarter (E. ½ S. W.) the West half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Two (2), the Southwest quarter of the Northwest quarter (S. W. N. W.) of Section Twelve (12), the North Half of the Northeast quarter (N. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E.) and the North Half of the Southeast quarter (N. ½ S. E.) of Section Fourteen (14), the Southwest quarter of the Northwest quarter (S. W. N. W.) of Section Nineteen (19), the Northwest quarter (N. W. ¼) and the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the Southeast quarter (S. E. ¼) of Section Twenty-four (24), the Northeast quarter of the Northeast quarter (N. E. N. E.) the West Half of the Northeast quarter (W. ½ N. E.), and the Southwest quarter (S. W. ¼) of Section Twenty-six (26), in Township Fourteen (14) South Range One (1) East of Willamette Meridian.

The Northeast quarter (N. E. ¼) the North Half of the Northwest **[490]** quarter (N. ½ N. W.) the Southwest quarter of the Northwest quarter (S. W. N. W.) and the Northwest quarter of the Southwest quarter (N. W. S. W.) of Section Four (4), Lots One (1), Two (2) Three (3), the Southeast quarter of the Northwest quarter (S. E. N. W.) Lots Six (6), Seven (7), the Southeast quarter of the Southwest quarter (S. E. S. W.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Six (6), the Northwest quarter of the Northeast quarter (N. W. N. E.) and the West Half of the Southwest quarter (W. ½ S. W.) of Section Eight (8), lot Three (3) of Section Ten (10), Lots One (1) and Two (2), the South Half of the Northeast quarter (S. ½ N. E.) Lots Three (3) and Four (4), the Southeast quarter of the Northwest quarter (S. E. N. W.) and the North Half of the Southeast quarter (N. ½ S. E.) of Section Twelve (12), the East Half of the Southeast quarter (E. ½ S. E.) of Section Fourteen (14), Lots Three (3), and Four (4), the Southwest quarter of the Northwest quarter (S. W. N. W.) and the South Half of the South Half (S. ½ S. ½) of Section Sixteen (16), the Northeast quarter of the Southwest quarter (N. E. S. W.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Eighteen (18), Lots One (1), Two (2) and the South Half of the Northeast quarter (S. ½ N. E.), lots Three (3), Four (4), and the South Half of the Northwest quarter— (S. ½ N. W.) the North Half of the Southwest quarter (N. ½ S. W.) and the Southwest quarter of the Southwest quarter (S. W. S. W.) of

Section Twenty (20), the North Half of the Northeast quarter (N. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E) the Northwest quarter (N. W. ¼) and the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the South Half (S. ½) of Section Twenty-four (24), all of Section Twenty-six (26) the North Half (N. ½) and the Southeast quarter (S. E. ¼) of Section Twenty-eight (28), the Northeast quarter (N. E. ¼) and the South Half (S. ½) of Section Thirty (30), the West Half (W. ½) and the Southeast quarter (S. E. ¼) of Section Thirty-two (32), the Southwest quarter (S. W. ¼) of Section Thirty-four (34) in Township Fourteen (14) South, Range Two (2) East of Willamette Meridian. **[491]**

Lot Four (4), the South Half of the Northwest quarter (S. ½ N. W.) and the East Half of the Southeast quarter (E. ½ S. E.) of Section Two (2), Lot Two (2) and the South Half of the Northeast quarter (S. ½ N. E.) Lots Three (3) and Four (4) and the South Half of the Northwest quarter (S. ½ N. W.) the West Half of the Southwest quarter (W. ½ S. W.), the Southeast quarter of the Southwest quarter (S. E. S. W.) and the Southeast quarter (S. E. ¼) of Section Four (4), Lot One (1), the South Half of the Northeast quarter (S. ½ N. E.) Lots Four (4) Five (5), the Southeast quarter of the Northwest quarter (S. E. N. W.) the Northeast quarter of the Southwest quarter (N. E. S. W.) Lots Six (6), Seven (7), the Northeast quarter of the Southeast quarter (N. E. S. E.) and the South Half of the Southeast quarter (S. ½ S. E.) of Section Six (6), the Southwest quarter of the Northeast quarter (S. W. N. E.) the West Half of the Northwest quar-

ter (W. ½ N. W.) the Southeast quarter of the Northwest quarter (S. E. N. W.) the North Half of the Southwest quarter (N. ½ S. W.) and the Southwest quarter of the Southwest quarter (S. W. S. W.) and the Southeast quarter (S. E. ¼) of Section Eight (8), all of Section Ten (10), the Northeast quarter (N. E. ¼) the Northwest quarter of the Southwest quarter (N. W. S. W.) the South Half of the Southwest quarter (S. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Eleven (11), the South Half of the Northeast quarter (S. ½ N. E.) the West Half (W. ½) the Northeast quarter of the Southeast quarter (N. E. S. E.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Twelve (12), all of Section Fourteen (14), all of Section Sixteen (16), the North Half of the Northeast quarter (N. ½ N. E.) and the Northwest quarter of the Northwest quarter (N. W. N. W.) of Section Seventeen (17), the East Half (E. ½) and Lot Four (4) of Section Eighteen (18), the North Half (N. ½) and the Southwest quarter (S. W. ¼) of Section Twenty (20), the Northwest quarter (N. W. ¼) and the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the West Half (W. ½) of Section Twenty-four (24), the Southeast quarter (S. E. ¼) of Section Twenty-six (26), the West Half (W. ½) of Section Twenty-eight (28), the Northeast quarter (N. E. ¼) of Section Thirty-one **[492]** (31) all of Section Thirty-four (34), all of Section Thirty-five (35) and all of Section Thirty-six (36) in Township Fourteen (14) South Range Three (3) East of Willamette Meridian.

The Southeast quarter of the Southeast quarter

(S. E. S. E.) of Section Seven (7), the North Half of the Southwest quarter (N. ½ S. W.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Eight (8), the South Half of the Northwest quarter (S. ½ N. W.) of Section Fifteen (15), all of Section Sixteen (16), the Northeast quarter of the Southeast quarter (N. E. S. E.) of Section Seventeen (17), the Southeast quarter of the Northeast quarter (S. E. N. E.) lots Three (3) and Four (4) the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Eighteen (18), the Northeast quarter of the Southwest quarter (N. E. S. W.) and the South Half of the South Half (S. ½ S. ½) of Section Twenty (20), the West Half of the Northeast quarter (W. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E.) the West Half (W. ½) the North Half of the Southeast quarter (N. ½ S. E.) of Section Twenty-two (22), the West Half of the Northeast quarter (W. ½ N. E.) the Northwest quarter (N. W. ¼) the Northwest quarter of the Southwest quarter (N. W. S. W.) the Southeast quarter of the Southwest quarter (S. E. S. W.) and the Southeast quarter (S. E. ¼) of Section Twenty-four (24), the North Half of the Northeast quarter (N. ½ N. E.) the Northeast quarter of the Northwest quarter (N. E. N. W.) of Section Twenty-five (25), the Northwest quarter of the Northwest quarter (N. W. N. W.) of Section Twenty-seven (27), the North Half of the Northeast quarter (N. ½ N. E.) the Southwest quarter of the Northeast quarter (S. W. N. E.) the Northwest quarter (N. W. ¼) the North Half of the Southwest quar-

ter (N. ½ S. W.) the North Half of the Southeast quarter (N. ½ S. E.) and the Southwest quarter of the Southeast quarter (S. W. S. E.), of Section Twenty-eight (28), the Northeast quarter of the Northeast quarter (N. E. N. E.) the South Half of the Northeast quarter (S. ½ N. E.) the West Half (W. ½) and the West Half of the Southeast quarter (W. ½ S. E.) of Section Twenty-nine (29), [493] Lots One (1), Two (2), Three (3), Four (4), and the East Half (E. ½) of Section Thirty (30), Lots One (1) Two (2) Three (3) and Four (4) and the East Half (E. ½) of Section Thirty-one (31), the Northwest quarter of the Northeast quarter (N. W. N. E.) and the West Half (W. ½) of Section Thirty-two (32) in Township Fourteen (14) South, Range Four (4) East of Willamette Meridian.

Lots One (1) Two (2) Three (3) Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9) Ten (10), Eleven (11) Twelve (12) Thirteen (13) Fourteen (14), Fifteen (15), Sixteen (16) and the South Half (S. ½) of Section One (1), Lots one (1) Two (2) Three (3), Four (4) Five (5) Six (6) Seven (7) Eight (8) Nine (9) Ten (10), Eleven (11) Twelve (12), Thirteen (13) and Sixteen (16) and the West Half of the Southwest quarter (W. ½ S. W.) the Southeast quarter of the Southwest quarter (S. E. S. W.) and the South Half of the Southeast quarter (S. ½ S. E.) of Section Two (2), Lots One (1) Two (2), Three (3), Four (4), Five (5), Six (6) Seven (7) Eight (8), Nine (9) Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), and Sixteen (16), and the South Half (S. ½) of Section Three (3), Lots One (1) Two (2) Three

(3), Four (4) Five (5) Six (6) Seven (7) Eight (8) Nine (9) Ten (10), Eleven (11) Twelve (12), Thirteen (13), Fourteen (14) Fifteen (15) Sixteen (16) and the South Half (S. ½) of Section Four (4), Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7) Eight (8) Nine (9) Ten (10), Eleven (11), Twelve (12) Thirteen (13), Fourteen (14), Fifteen (15) Sixteen (16) and the South Half (S. ½) of Section Five (5), Lots One (1) Two (2), Three (3) Four (4) Five (5) Six (6) Seven (7) Eight (8) Nine (9), Ten (10), Eleven (11), Twelve (12) Thirteen (13) Fourteen (14) the East Half of the Southwest quarter (E. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Six (6), all of Section Eight (8), all of Section Nine (9), all of Section Ten (10), all of Section Eleven (11), all of Section Twelve (12), all of Section Thirteen (13), **[494]** all of Section Fourteen (14), all of Section Fifteen (15) the East Half (E. ½) of Section Seventeen (17) and all of Section Eighteen (18), in Township Fifteen (15) South Range Three (3) East of Willamette Med. containing 41967.40 acres more or less according to the Government Survey thereof.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part its successors and assigns, FOREVER.

IN TESTIMONY WHEREOF, the said parties of the first part have hereunto set their hands and

seals the day and year last above written.

CHARLES A. SMITH. [Seal]
JOHANNA A. SMITH. [Seal]
_____ [Seal]
_____ [Seal]

Signed, sealed and delivered in presence of
ETHEL STEELE.
CHARLES L. TRABERT.

State of Minnesota,
County of Hennepin,—ss.

This certifies that on this 4th day of June, 1906, before me, the undersigned Charles L. Trabert, a notary public in and for said county and State, personally appeared the within named Charles A. Smith and Johanna A. Smith, his wife, to me personally known to be the individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal the day and year in this certificate first above written.

[Seal] CHARLES L. TRABERT,
Notary Public in and the County of Hennepin, and State of Minnesota.

My commission expires 30th day of October, 1909.

[495]

Endorsed:

Compared 7939 Indexed

DEED.

C. A. Smith et ux. to
Linn & Lane Timber Co.
Linn County, Oregon.

12–3 & 4	E.
13–1, 2, 3, & 4	E.
14–1, 2, 3, & 4	E.
15–3	E.

(1)

State of Oregon,
County of Linn,—ss.

I hereby certify that the within was received and duly recorded by me in Linn County Records, Book of ——— Vol. 87 Page 394 on the 9 day of Sept. 1908 at 8–12 o'clock A. M.

GRANT FROMAN,
Recorder of Linn County, Oregon.
By ———————,
Deputy.

Filed May 10, 1910. G. H. Marsh, Clerk.

[496]

U. S. Exhibit No. 157.

(Govt. Ex. 61.)

THIS INDENTURE, Made this 28th day of May in the year of our Lord one thousand nine hundred and seven (1907) between Charles J. Swanson and Christine Swanson, his wife, of the County of Hennepin and State of Minnesota, parties of the first part, and the Linn and Lane Timber Company a corporation organized and existing under the laws

of the State of Minnesota, party of the second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Ten 00/100 Dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns Forever, an undivided one-fourth interest in a tract or parcel of land, lying and being in the County of Linn and State of Oregon, and described as follows, to-wit:

The Northeast quarter of the Southwest quarter (N. E. S. W.) the South Half of the Southwest quarter (S. ½ S. W.) and the Northwest quarter of the Southeast quarter (N. W. S. E.) of Section Ten (10), in Township Thirteen (13) South Range One (1) East of Willamette Meridian.

The North Half of the Northwest quarter (N. ½ N. W.) the East Half of the Southwest quarter (E. ½ S. W.) the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Two (2), the Southwest quarter of the Northwest quarter (S. W. N. W.) of Section Twelve (12), the North Half of the Northeast quarter (N. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E.) and the North Half of the Southeast quarter (N. ½ S. E.) of Section Fourteen (14), the Northwest quarter (N. W. ¼) the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the North Half of the Southeast quarter (N. ½ S. E.) of Section Twenty-four (24), and the Southwest quarter (S. W. ¼) of Section Twenty-six (26) in Township

[497] Fourteen (14) South Range One (1) East of Willamette Meridian.

The North East quarter (N. E.) of Section Eighteen (18), Township Twenty-three (23), S. Range One (1) E.

The South West quarter (S. W.) of Section Four (4) the North half of the North East quarter (N. ½ N. E.), the North half of the North West quarter (N. ½ N. W.) the South West quarter of the North West quarter (S. W. N. W.) and the East half of the South East quarter (E. ½ S. E.) of Section Eight (8), the South East quarter (S. E.) of Section Fourteen (14), the North Half of the North Half (N. ½ N. ½) of Section Twenty (20) the North East quarter (N. E. ¼) of Section Thirty (30) and the South West quarter (S. W.) of Section Thirty-four (34), all being in Township Thirteen (13) S. Range Two (2) E.

The North West quarter of the South West quarter (N. W. S. W.) of Section Four (4) the East half of the North West quarter (E. ½ N. W.) of Section Six (6), the North West quarter of the North East quarter (N. W. N. E.) and the West half of the South West quarter (W. ½ S. W.) of Section Eight (8) the North East quarter (N. E.) the East half of the North West quarter (E. ½ N. W.) the North half of the South East (N. ½ S. E.) of Section Twelve (12) and the North West quarter of the North *of the North* East quarter (N. W. N. E.) the North half of the North West quarter (N. ½ N. W.) the South East quarter of the North West quarter (S. E. N. W.) of Section Tw*n*ety Two (22) and all of Section Twenty Six (26), all being in

Township Fourteen (14) S., Range Two (2) E.

The North East quarter (N. E.) the South East quarter of the North West quarter (S. E. N. W.) the West half of the West half (W. ½ W. ½) the South East quarter of the South West quarter (S. E. S. W.) and the South Half of the South East quarter (S. ½ S. E.) of Section Two (2), the North East of the South West quarter (N. E. S. W.) the South half of the South West quarter (S. ½ S. W.) the South West quarter of the South East quarter (S. W. S. E.) of Section Eight (8) the North half **[498]** of the North East quarter (N. ½ N. E.) the East half of the North West quarter (E. ½ N. W.) and the South West quarter (S. W.) of Section Ten (10), the North half of the North East quarter (N. ½ N. E.) ~~the East half of the North West quarter (E. ½ N. W.)~~ the East half of the North West Quarter (E. ½ N. W.) of Section Twelve (12), the North West quarter of the North East quarter (N. W. N. E.) the East half of the North West Quarter (E. ½ N. W.) the South West quarter of the North West quarter (S. W. N. W.) of Section Eighteen (18) the South West quarter of the North West quarter (S. W. N. W.) of Section Thirty-four (34), all being in Township Thirteen (13) S., Range Three (3) E.

All of Section Ten (10) the North half of the North East quarter (N. ½ N. E.) the South East quarter of the North East quarter (S. E. N. E.) the North East quarter of the South East quarter (N. E. S. E.) the West half of the South West quarter (W. ½ S. W.) the South East quarter of the Southwest quarter (S. E. S. W.) and the South West

quarter of the South East quarter (S. W. S. E.) of Section Eleven (11) The West half (W. ½) of Section Twelve (12) the North West quarter of the North West quarter (N. W. N. W.) of Section Seventeen (17) The North half of the North East quarter (N. ½ N. E.) the South West quarter of the North East quarter (S. W. N. E.) the South East quarter (S. E.) the South East quarter of the North East quarter (S. E. N. E.) of Section Eighteen (18) the South West quarter (S. W.) of Section Twenty (20) all being in Township Fourteen (14) S. Range Three (3) E.

The North East quarter (N. E.) and the south half (S. ½) of Section Two (2), the West Half (W. ½) of Section Six (6) the *the* North West quarter (N. W.) of Section Twelve (12), the North East *quar-* of the Southwest quarter (N. E. S. W.) the South West quarter of the South East quarter (S. W. S. E.) the North half of the South East quarter (N. ½ S. E.) of Section Thirteen (13) the North West quarter (N. W.) of Section Fourteen (14) the North East quarter (N. E.) of Section Twenty (20) the North West quarter (N. W.) of Section Twenty One (21) **[499]** the North half of the North half (N. ½ N. ½) of Section Twenty Two (22), all being in Township Thirteen (13) S. Range Four (4) E.

The South West quarter (S. W.) the South half of the South East quarter (S. ½ S. E.) of Section Eighteen (18) the East half of *of* the South West quarter (E. ½ S. W.) the South Half of the South East quarter (S. ½ S. E.) of Section Twenty (20) the South East quarter of the North East quarter (S. E. N. E.) the west half of the North East quarter

(W. ½ N. E.) the North West quarter (N. W.) and the North half of the South half (N. ½ S. ½) the South West quarter of the South West (S. W. S. W.) of Section Twenty Two (22) the South West quarter of the North East quarter (S. E. N. E.) East half of the North West quarter (E. ½ N. W.) the South West quarter of the North West quarter (S. W. N. W.) of Section Twenty-four (24) the North West quarter of the North West quarter (N. W. N. W.) of Section Twenty-seven (27) the North half of the North East quarter (N. ½ N. E.) the South West quarter of the North East quarter (S. W. N. E.) the North West quarter (N. W.) and the North half of the South half (N. ½ S. ½) of Section Twenty eight (28), the East half of the North East quarter (E. ½ N. E.) the South West quarter of the North East quarter (S. W. N. E.) the North West quarter of the South East quarter (N. W. S. E.) the East half of the West half (E. ½ W. ½) of Section Twenty Nine (29), all being in Township Fourteen (14) S. Range Four (4) E. of Willamette Meridian, Oregon.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the *of the* second part, his heirs and assigns, FOREVER, ~~And the said Charles J. Swanson, party of the first part, for himself and his heirs, executors and administrators, does covenant~~

~~with the said party of the second part, his heirs and assigns, that he is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in manner and form aforesaid. and that the same are free from all~~ [500] ~~incumbrances, and the above bargained and granted lands and premises in the quiet and peaceable possession of the said party of the second part, his heirs, and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will WARRANT AND DEFEND.~~

IN TESTIMONY WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHARLES J. SWANSON. (Seal)
CHRISTIN SWANSON. (Seal)

Signed, sealed and delivered, in presence of
HENRY EBERT.
A. S. KEYES.

State of Minnesota,
County of Hennepin,—ss.

On this 28th day of May, 1907, before me, a Notary Public, within and for said County, personally appeared Charles J. Swanson and Christine Swanson, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal] HENRY EBERT,
Notary Public, Hennepin County, Minnesota.
My commission expires Sept. 15, 1907.

Endorsed:

Compared 7938 DEED 3.60 Indexed
Chas. J. Swanson et ux to Linn and Lane Tbr. Co.
May 28, 1907.
14–1, 2, 3, & 4—E
13–2, 3, & 4—E (2)

State of Oregon,
County of Linn,—ss.

I hereby certify that the within was received and duly recorded by me in Linn County Records, Book of ——— Vol. 87, Page 391, on the 9th day of Sept. 1908, at 8–10 o'clock A. M.

GRANT FROMAN,
Recorder of Linn County, Oregon.
By ————————,
Deputy.

Filed May 10, 1910. G. H. Marsh, Clerk. **[501]**

U. S. Exhibit No. 161.

(Govt. Exhibit 65.)

THIS INDENTURE, Made this 15th day of August in the year of our Lord one thousand nine hundred and seven between Nils O. Werner and Eva C. Werner, his wife of the County of Hennepin and State of Minnesota, parties of the first part, and the Linn and Lane Timber Company of the County of Hennepin and State of Minnesota party of the second part;

WITNESSETH: That the said parties of the first part, in consideration of the sum of One Dollar and other valuable considerations to them in hand paid by the said party of the second part, the receipt

whereof is hereby acknowledged, do hereby Grant, Bargain, Sell, Remise, Release, Quit-claim and Convey unto the said party of the second part, their successors and assigns, Forever, all the following tract or parcel of land lying and being in the County of Linn and State of Oregon, described as follows, to-wit:

The south half of Section Twenty-four (24) township Fourteen (14) South, Range Two (2) east Willamette Meridian; also all of Section Fourteen (14); also the north half of Section Twenty (20); the northwest quarter and the southeast quarter of section twenty-two (22); the west half of Section Twenty-four (24); the southeast quarter of Section Twenty-six (26); the west half of Section Twenty-eight (28); the northeast quarter of Section Thirty-one (31); also all of Sections Thirty-four (34) and Thirty-five (35), in Township Fourteen south, Range three east of Willamette meridian, also the northwest quarter of the southeast quarter of Section eighteen (18); the northeast quarter of the northeast quarter of Section Twenty-five (25); the southwest quarter of the southeast quarter of Section Twenty-eight (28); the west half of the west half of Section Twenty-nine (29); all of Sections Thirty (30) and Thirty-one (31); and the west half of Section Thirty-two (32), in Township Fourteen south, range four (4) **[502]** east Willamette meridian.

TO HAVE AND TO HOLD, the above Quit-claimed premises, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second

part, their successors and assigns, Forever.

IN TESTIMONY WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

NILS O. WERNER. (Seal)
EVA C. WERNER. (Seal)
_____. (Seal)
_____. (Seal)

Signed, sealed and delivered in presence of
A. V. OSTROM.
CARL H. SOMMER.

State of Minnesota,
County of Hennepin,—ss.

On this 15th day of August in the year one thousand nine hundred and seven, before me, A Notary Public in and for said County and State, personally appeared Nils O. Werner and Eva C. Werner, his wife, to me known to be the persons who are described in, and who executed the foregoing instrument, and acknowledged to me that they executed the same.

[Seal] A. V. OSTROM,
Notary Public Hennepin County, State of Minnesota.
My commission expires Feb. 1st, 1914.

Endorsed:

Compared QUITCLAIM DEED 7937 Indexed
Nils O. Werner and Eva C. Werner, his wife, to Linn and Lane Timber Company 14–1, 2, 3, & 4—E.

OFFICE OF REGISTER OF DEEDS.
County of Linn, Oregon.

I hereby certify that the within Instrument was

filed in this office for record on the 9 day of Sept. A. D., 1908, at 8:08 o'clock A. M. and was duly recorded in Book 87 of 390 on page ———

GRANT FROMAN,
Register of Deeds.

Filed May 10, 1910. G. H. Marsh, Clerk. **[503]**

U. S. Exhibit No. 162.

UNITED STATES OF AMERICA.

STATE OF OREGON.

Office of the Secretary of State.

I, F. W. BENSON, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify:

That I have carefully compared the annexed copy of a duly authenticated copy of the certificate of incorporation of the LINN AND LANE TIMBER COMPANY, incorporated under the laws of the State of Minnesota, with the original authenticated copy of certificate of incorporation of the said LINN AND LANE TIMBER COMPANY, together with the endorsements thereon, filed in the Office of the Secretary of State of the State of Oregon on the 25th day of June, A. D. 1906, and that the same is a full, true and correct transcript therefrom and of the whole thereof.

I FURTHER CERTIFY that the said LINN AND LANE TIMBER COMPANY has complied with all the provisions of "An Act to provide for the licensing of domestic corporations and foreign corporations, joint stock companies and associations, etc.," approved February 16, 1903, and has the right,

therefore, to transact business in Oregon as required by such statutes providing for the licensing of domestic and foreign corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 23rd day of September, A. D. 1908.

[State Seal] F. W. BENSON,
Secretary of State. **[504]**

CERTIFICATE OF INCORPORATION
of
LINN AND LANE TIMBER COMPANY.

The undersigned having associated to form a corporation under the General Laws of the State of Minnesota, do hereby certify:

I.

The name of the Corporation shall be LINN AND LANE TIMBER COMPANY; the general nature of its business shall be to buy, hold, and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same; to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber, and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances, for irrigation, and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to de-

velop electric energy and other power for the operation of its works and the transportation of its products, and for sale. The principal place of transacting the business of the corporation shall be at the City of Minneapolis, in the State of Minnesota.

II.

The period of duration of the corporation shall be thirty (30) years.

III.

The names and places of residence of the incorporators are Charles A. Smith, Johanna A. Smith and John Lind, all residing at Minneapolis, Minnesota.

IV.

The management of the corporation shall be vested in a board of directors consisting of three persons, who shall elect from their **[505]** own number a president and a vice president of the corporation, and they shall also elect a secretary and treasurer, who are not required to be directors or stockholders, and they may elect the same person to hold both of said last named offices. The date of the annual meeting at which said board shall be elected shall be the second Tuesday in January in each year. The above named Charles A. Smith, Johanna A. Smith and John Lind, whose addresses are Minneapolis, Minnesota, shall compose the board of directors until the first election of directors in January, 1907.

V.

The amount of capital stock of this corporation is one hundred Thousand Dollars ($100,000). The same shall be paid in as required by the Board of

Directors, and shall be divided into one thousand (1000) shares of one hundred dollars ($100) par value each.

VI.

The highest amount of indebtedness or liability to which the corporation shall at any time be subject is one million dollars ($1,000,000).

IN WITNESS WHEREOF, we have hereunto subscribed our names this 23rd day of May, 1906.

CHARLES A. SMITH.
JOHANNA A. SMITH.
JOHN LIND.
CHARLES L. TRABERT.
L. EUGENE MINAR.

State of Minnesota,
County of Hennepin,—ss.

On this 23rd day of May, 1906, before me personally appeared Charles A. Smith, Johanna A. Smith and John Lind, to me known to be the persons described in and who executed the foregoing Certificate of Incorporation, and acknowledged that they executed the same as their free act and deed.

[L. S.] CHARLES L. TRABERT,
Notary Public, Hennepin County, Minnesota.
My commission expires Oct. 30, 1909. **[506]**

I, Vernon A. Smith, do hereby certify that I am the Secretary of the Linn and Lane Timber Company, a corporation organized under the Laws of the State of Minnesota, with its principal place of business at the City of Minneapolis, in said State of Minnesota; that as such Secretary, I am the legal keeper of the original Certificate or Articles of Incorporation of

said Linn and Lane Timber Company, and that said original Certificate or Articles are now in my custody as such Secretary; that I have compared the foregoing Certificate of Incorporation of said Linn and Lane Timber Company with the said original Certificate or Articles of Incorporation of said Linn and Lane Timber Company, and that the same is a true and correct copy of said original Certificate or Articles, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Linn and Lane Timber Company at the city of Minneapolis, in said State of Minnesota, this 19 day of June, A. D. 1906.

[Corporate Seal] VERNON A. SMITH,
Secretary of the Linn and Lane Timber Company.

State of Minnesota,
Department of State.

I, P. E. Hanson, the Secretary of State of the State of Minnesota, do hereby certify that Vernon A. Smith, the Secretary of the Linn and Lane Timber Company, whose signature is affixed to the foregoing certificate, has the requisite official knowledge as to whether the certificate or articles of incorporation of said Linn and Lane Timber Company are of a genuine, valid and subsisting character, and that said Vernon A. Smith is the officer of the said Linn and Lane Timber Company who has the legal custody of the original Certificate or Articles of Incorporation of the said Linn and Lane Timber Company, and that the foregoing copy of the Certificate or Articles

of Incorporation of said Linn and Lane Timber Company is duly certified by said [507] Vernon A. Smith as the officer of said Company who has the legal custody of said original certificate or Articles of Incorporation.

WITNESS my official signature hereunto subscribed and the seal of the State of Minnesota hereunto affixed this 19 day of June in the year of our Lord one thousand nine hundred and six.

[State Seal] P. E. HANSON,
Secretary of State.

(Endorsed:)

F-341

Certified Copy of Certificate of Incorporation of LINN AND LANE TIMBER COMPANY. Filed in the office of the Secretary of State of the State of Oregon, for Record at Nine o'clock A. M., the 25th day of June, 1906, and recorded on page —— of Book —— of Records of Articles of Incorporation of private corporations.

F. I. DUNBAR,
Secretary of State.

Filed May 10, 1910. G. H. Marsh, Clerk. [508]

U. S. Exhibit No. 163.

UNITED STATES OF AMERICA.
STATE OF OREGON.
Office of the Secretary of State.

I, F. W. BENSON, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify:

That I have carefully compared the annexed copy of Power of Attorney from LINN AND LANE TIMBER COMPANY to FRED A. KRIBS, with the original Power of Attorney from LINN AND LANE TIMBER COMPANY to FRED A. KRIBS, together with the endorsements thereon, filed in the Office of the Secretary of State of the State of Oregon on the 25th day of June, A. D. 1906, and that the same is a full, true and correct transcript therefrom and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 23d day of September, A. D. 1908.

[State Seal] F. W. BENSON,
Secretary of State. [509]

POWER OF ATTORNEY—Foreign Corporations.

To be executed, acknowledged and recorded in the office of the Secretary of State by a foreign corporation. Required under the provisions of "An Act to provide for the licensing of domestic corporations and foreign corporations, joint stock companies and associations, etc.," approved February 16, 1903, before transacting business in the State of Oregon.—Sec. 6, p. 44, Laws of 1903.

KNOW ALL MEN BY THESE PRESENTS:

That LINN AND LANE TIMBER COMPANY is a corporation duly organized under and by virtue of the laws of Minnesota, having its principal place of business in the City of Minneapolis, Minnesota, and

a place of business in Portland, in the State of Oregon.

That said LINN AND LANE TIMBER COMPANY has made, constituted and appointed, and does hereby make, constitute and appoint FRED A. KRIBS, a citizen of the United States, and a citizen and resident of the State of Oregon, residing at Portland, Oregon, and whose place of business is at No. 330, Chamber of Commerce Street, its true and lawful Attorney in Fact and authorized Agent for it, and in its name, place and stead to make and accept all service of all writs, processes and summonses in any action, suit or proceeding in any of the courts of the State of Oregon, or United States courts therein, and upon whom all lawful writs, processes and summonses may be served with the same effect as though the company existed in the State of Oregon, requisite and necessary to give competent and complete jurisdiction of the said LINN AND LANE TIMBER COMPANY to any of the said courts:

GIVING AND GRANTING unto said FRED A. KRIBS full power and authority to do and perform every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as the said LINN AND LANE TIMBER COMPANY might or could do if personally present, hereby ratifying and confirming all that the said FRED A. KRIBS shall lawfully do or cause to be done by authority thereof. **[510]**

This Power of Attorney is irrevocable except by the substitution of another qualified person for the one hereby appointed Attorney in Fact.

IN WITNESS WHEREOF, said corporation, in pursuance of a resolution duly adopted by its Board of Directors has caused this instrument to be executed in its name by its President and Secretary and its Corporate Seal to be hereto affixed the 9 day of June, 1906.

(Corporate Seal)

LINN AND LANE TIMBER CO. (Seal)

C. A. SMITH, (Seal)
President.

V. A. SMITH, (Seal)
Secretary.

State of Minnesota,
County of Hennepin,—ss.

THIS CERTIFIES, that on this 9 day of June, 1906, before the undersigned, a Notary Public in and for said county and State personally appeared the within named CHARLES A. SMITH, the President and VERNON A. SMITH, the Secretary of the LINN AND LANE TIMBER COMPANY, the corporation mentioned in and which executed the foregoing Power of Attorney and acknowledged that they executed the same by the authority and on behalf of said LINN AND LANE TIMBER COMPANY pursuant to a resolution of the Board of Directors of said corporation, duly adopted on the 9 day of June, 1906; and VERNON A. SMITH, the Secretary of said LINN AND LANE TIMBER COMPANY, further acknowledged that the Corporate Seal hereinbefore attached and impressed herein is the Corporate Seal of said Corporation and was affixed thereto by him.

IN TESTIMONY WHEREOF, I have hereunto

set my hand and notarial seal this 9th day of June, 1906.

(L. S.) MAUD GOLDSBURY,
Notary Public, Hennepin Co., Minn.

My commission expires April 10, 1908. **[511]**

(Endorsed):

F-341. POWER OF ATTORNEY, LINN AND LANE TIMBER CO.
TO
FRED A. KRIBS
Filed,
June 25, 1906.
F. I. DUNBAR,
Secretary of State.

Filed May 10, 1910. G. H. Marsh, Clerk. **[512]**

U. S. Exhibit No. 168.

UNITED STATES OF AMERICA.
STATE OF OREGON.
Office of the Secretary of State.

I, F. W. BENSON, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify: That I have carefully compared the annexed copy of the declaration of purpose to engage in business in the State of Oregon of the LINN AND LANE TIMBER COMPANY, with the original declaration of purpose to engage in business in the State of Oregon of the said LINN AND LANE TIMBER COMPANY, together with the endorsements thereon, filed in the Office of the Secretary of State of the State of Oregon on the 25th day of June, A. D. 1906, and that the same is a full, true and correct transcript therefrom and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 23d day of September, A. D. 1908.

[State Seal] F. W. BENSON,
Secretary of State. [527]

DECLARATION—Foreign Corporation.

This declaration must be accompanied by a certified copy of the charter, or articles of incorporation of such foreign corporation, joint stock company or association, certified to by the legal keeper of the original, together with a certificate of the Secretary of State of a State or Territory of the United States, or of the United States Ambassador, Minister, Consul General, Vice Consul or Charge d'Affaires in a foreign country, under whose jurisdiction such corporation, joint stock company or association was formed, that such certifying officer has the requisite official knowledge as to whether such charter or articles of incorporation are of a genuine, valid and subsisting character, and that such character is duly certified by the officer having the legal custody of the original.

Corporation Fee Book No. 1.
No. F-341 Page No. 55.

DECLARATION OF PURPOSE TO ENGAGE IN BUSINESS IN THE STATE OF OREGON.

KNOW ALL MEN BY THESE PRESENTS:

That the LINN AND LANE TIMBER COMPANY, a Corporation, organized and existing under and pursuant to the Laws of Minnesota, having its principal office at Number 410 Andrus Building *Street,* in the City of Minneapolis, Minnesota, hereby makes the following declaration of its desire and purpose to engage in business within the State of Oregon, which declaration is accompanied by a duly authenticated copy of its certificate of incorporation in compliance with the provisions of "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903:

The full name under which it proposes to transact business is

LINN AND LANE TIMBER COMPANY.

The name of the State or Country under whose laws it was organized in State of Minnesota.

The location of its home office is at Number 410 Andrus Bldg., in the City of Minneapolis, State of Minnesota.

The date of its formation or incorporation was the 31st day of May, 1906. [528]

The amount of its capital stock is One Hundred Thousand ($100,000) Dollars.

The nature of the pursuit, business, or occupation in which it is authorized to engage is to buy, hold,

and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, to carry on logging operations, and buy, sell, store and transport logs and other forest products for its self and others; to build and operate mills for the manufacture of lumber and other wood and forest products to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale.

Said corporation will commence the transaction of business in the State of Oregon on the 25th day of June, 1906.

The location of the Principal office within the State of Oregon is at Number 330 Chamber of Commerce, in the City of Portland, County of Multnomah.

The name of its Attorney in Fact constituted and appointed in accordance with the provisions of Section 6 of "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903, is Fred A. Kribs, whose business address is at Number 330 Chamber of Commerce, in the City of Portland, in the County of Multnomah.

The names and addresses of its principal officers and of its directors or trustees, are as follows: [529]

Names.	Office.	Postoffice Address.
Charles A. Smith,	President and Director,	Minneapolis, Minnesota.
Vernon A. Smith,	Secretary,	Minneapolis, Minn.
Johanna A. Smith,	Vice-President and Director,	Minneapolis, Minn.
Nann A. Smith,	Treasurer,	Minneapolis, Minn.
John Lind,	Director,	Minneapolis, Minn.

The name and residence of its General Agent within the State of Oregon is Fred. A. Kribs, Number 330 Chamber of Commerce, in the City of Portland, in the County of Multnomah.

IN WITNESS WHEREOF, said Corporation, in pursuance of a resolution duly adopted by its Board of directors, has caused this declaration to be signed by its President and Secretary, and its Corporate Seal to be affixed, the 9th day of June, 1906.

[Seal]

[Corporate Seal]

LINN & LANE TIMBER CO. [Seal]
C. A. SMITH, President. [Seal]
V. A. SMITH, Secretary. [Seal]

State of Minnesota,
County of Hennepin,—ss.

I, CHARLES A. SMITH, President, and I, VERNON A. SMITH, Secretary of the LINN AND LANE TIMBER COMPANY, being severally duly sworn depose and say, and each for himself says, that I am the President and the Secretary, respectively, of the LINN AND LANE TIMBER COM-

PANY, the corporation mentioned in and which executed the foregoing declaration, and that said declaration, is a full, [530] true and correct statement of the matters therein contained according to the best of my information, knowledge and belief.

C. A. SMITH.
V. A. SMITH.

Subscribed and sworn to before me this 9th day of June, 1906.

[Seal] MAUD GOLDSBURY,
Notary Public, Hennepin Co. Minn.

My commission expires April 10, 1908.

State of Minnesota,
County of Hennepin,—ss,

I, VERNON A. SMITH, Secretary of the LINN AND LANE TIMBER COMPANY, being first duly sworn depose and say upon oath that CHARLES A. SMITH, is the President of said corporation, and that the signature affixed to the above and foregoing declaration is the genuine signature of said CHARLES A. SMITH; that the Corporate Seal hereinbefore attached and impressed herein is the Corporate Seal of said corporation, and was affixed thereto by me, and that the foregoing declaration was executed for the LINN AND LANE TIMBER COMPANY by its President and Secretary, pursuant to a resolution of the Board of Directors of said corporation duly adopted on the 9th day of June, 1906, so help me God.

V. A. SMITH.

Subscribed and sworn to before me this 9th day of June, 1906.

[Seal] MAUD GOLDSBURY,
Notary Public, Hennepin Co., Minn.

My commission expires April 10, 1908.

Endorsed:

FILE NO. F-341.

Declaration of LINN AND LANE TIMBER COMPANY, Principal Office 330 Chamber of Commerce, Portland, Ore.

Filed in the office of the Secretary of State of the State of Oregon, for record, at nine o'clock A. M., the 25th day of June, *190*, and recorded at page ——, of Book of Records of Declarations of Foreign Corporations.

F. T. DUNBAR,
Secretary of State.

Filed May 10, 1910. G. H. Marsh, Clerk. [531]

U. S. Exhibit No. 171.

(Govt. Exhibit 66.)

FIRST NATIONAL BANK.
PAID
Mar. 8, 1901.
ROSEBURG, OREGON.

Roseburg, Oregon, Mch. 8th, 1901. No.——

FIRST NATIONAL BANK OF ROSEBURG,

Pay to
Order

Yourselves, or ~~Order~~ $400.00

Four Hundred and no/100 Dollars.

FRED A. KRIBS.

(Pinned on bottom):

$400.00 No.—— Cop C. A. S. Mch. 8, 1901.

Pay to yourselves Bal. $——

Cy for Stratford land (U. S. Agt.)

Filed May 10, 1910. G. H. Marsh, Clerk. **[532]**

U. S. Exhibit No. 184.

(Govt. Exhibit 56.)

PAID

Feb. 14, 1902.

Roseburg, Oregon.

Roseburg, Oregon, Feb. 13, 1902. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Order

Pay to Mitchell and Tanner or ~~Bearer~~ $500.00

Five Hundred and no/100 Dollars.

FRED A. KRIBS.

(Endorsements):

Mitchell & Tanner,

Douglas County Bank,

Paid Feb. 14, 1902.

Roseburg, Oregon.

Pay to the order of

any Bank or Banker

Merchants National Bank

Feb. 13, 1902.

Portland, Oregon.

R. W. Hoyt, Cashier.

Filed May 10, 1910. G. H. Marsh, Clerk. **[533]**

U. S. Exhibit No. 185.

(Govt. Exhibit 57.)

PAID

Jun. 16, 1902.

Roseburg, Oregon.

Roseburg, Oregon, June 14, 1902. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Order

Pay to Mitchell and Tanner or ~~Bearer~~ $1,000.00

One Thousand and no/100 Dollars.

FRED A. KRIBS.

(Endorsements):

Mitchell & Tanner.

Pay to the order of any

Bank or Banker.

Douglas County Bank,

Roseburg, Ore.

Pay to the order of any

Bank or Banker.

Merchants National Bank,

Jun. 14, 1902,

Portland, Oregon.

R. W. Hoyt, Cashier.

Filed May 10, 1910. G. H. Marsh, Clerk. [534]

U. S. Exhibit No. 186.

(Govt. Exhibit 58.)

FIRST NATIONAL BANK.

PAID

Oct. 16. 1901.

Roseburg, Oregon.

Roseburg, Oregon, Oct. 15, 1901. No. ——.

FIRST NATIONAL BANK OF ROSEBURG.

Pay to Order

Mitchell and Tanner, or ~~Bearer~~ $600.00

Six Hundred and no/100 Dollars.

FRED A. KRIBS.

(Endorsements):

Mitchell & Tanner.

Douglass County Bank.

F. S. Godfrey, Cashier.

Pay to the order of any

Bank or Banker.

Merchants National Bank,

Oct. 15, 1901,

Portland, Oregon.

R. W. Hoyt, Cashier.

Filed May 10, 1910. G. H. Marsh, Clerk. [535]

Mr. UELAND.—I offer in evidence the minutes of the meeting of the stockholders and directors of the Linn and Lane Timber Company in both cases. I offer it with special reference to the first meeting of Directors held the 9th day of June, 1906; with special reference to the meeting of incorporators held on the same date, and with special reference to the special meeting of stockholders held October 31, 1908.

Mr. McCOURT.—I object to anything that the minutes purports to show subsequent to the making of the Linn and Lane Timber Company a party to this suit.

Mr. UELAND.—That was November 16.

Mr. McCOURT.—That would include it, but I want to make the statement as applying to anything in these minutes subsequent to the filing of the amended bill making the defendant Linn and Lane Timber Company a party, which amended bill was filed November 16, 1908.

Objection overruled; exception taken.

Minutes read into the record as follows: **[536]**

[Minutes of Board of Directors' Meeting of Linn and Lane Timber Co.]

The undersigned being the incorporators and first Board of Directors of the Linn and Lane Timber Company and being also the subscribers to all the stock of said corporation, which has been subscribed, each of us having this day subscribed for one share, do hereby mutually agree that the first meeting of the Board of Directors of said corporation shall be held at this time and place, to-wit: At the office of the C. A. Smith Timber Company in the Andrus Building in the City of Minneapolis, on this the 9th day of June, 1906, at the hour of 4 o'clock P. M., for the election of officers of said Board and of said corporation and for the transaction of such other business as may come before the Board of Directors.

C. A. SMITH.
JOHN LIND.
JOHANNA A. SMITH.

The directors having subscribed the foregoing agreement, the first meeting of the Board of Directors was held pursuant thereto at the time and place therein stated, all the directors being present, C. A. Smith acting as chairman of the meeting and John Lind as secretary.

Officers of the Board were elected, each by unanimous vote, as follows: Charles A. Smith, president, Johanna A. Smith, vice-president; Vernon A. Smith, secretary; Nann A. Smith, treasurer.

On motion of Mr. Lind, a disk on which is engraved the words: "Linn & Lane Timber Company Minneapolis, Minn., Corporate Seal," and of which an impression is made on the margin hereof, was adopted by unanimous vote as the seal of [537] the Company.

(Seal)

On motion of Mr. Smith it was voted that the Secretary of the Company should receive as compensation for his services the sum of $10.00 for each meeting of the Board.

Mr. Smith laid before the Board deeds to the Company of certain timber lands in the State of Oregon, executed by himself and wife, and a proposition to deliver the same to the Company and thereby vest the title to the land therein described in the Company, and accept as a full consideration for the same the entire authorized capital stock of the Company, fully paid up and non-assessable, certificate or certificates for all such stock, except the two shares subscribed by Johanna A. Smith and John Lind, to be issued to him, and the two shares subscribed by Johanna A. Smith and John Lind to be issued to them,

respectively as fully paid. On motion of Mr. Lind, seconded by Johanna A. Smith, the proposition was accepted by unanimous vote, and the President and Secretary were directed to issue and deliver certificates for the entire authorized capital stock of the Company in accordance with the terms thereof.

On motion of Mr. Lind, the President and Secretary were directed, on behalf of the Company to constitute and appoint Fred A. Kribs resident agent of the Company in the State of Oregon, and to do all things necessary to obtain for the Company the right to do business in the State of Oregon, and to pay all fees and charges required for that purpose.

On motion of Mr. Smith, it was voted that, for the time being the principal office of the company be kept at room **[538]** No. 411 Andrus Building, Minneapolis, Minnesota.

The meeting thereupon adjourned.

Dated June 9th, 1906.

JOHN LIND.

Secy. Stockholders Meeting.

Attest: VERNON A. SMITH, Sec'y.

Pursuant to notice and the Articles of Incorporation, the Annual Stockholders' meeting of this Company was duly called to order at the Company's office in the Andrus Building, in the City of Minneapolis, on Tuesday, this the 8th day of January, 1907, at which meeting there were present in person all of the stockholders as follows:

C. A. Smith.....998 shares
Johanna A. Smith..... 1 share
Vernon A. Smith..... 1 share.

The President of the Corporation, Mr. C. A.

Smith, acted as Chairman, and the undersigned as Secretary of the Stockholders' meeting.

The minutes of the meeting of June 9th, 1906 were read, and the action of the Directors approved.

The Stockholders thereupon elected by the unanimous vote of the stockholders, Directors for the ensuing year as follows: Charles A. Smith, Johanna A. Smith and Vernon A. Smith.

There being no further business, the stockholders' meeting adjourned.

Dated June 8th, 1907.

VERNON A. SMITH,
Secy. Stockholders' Meeting.

Immediately after the stockholders' meeting, the Board of Directors met, all present, C. A. Smith acting as chairman, [539] and Vernon A. Smith as Secretary.

Officers of the Board were elected each by unanimous vote as follows:

Charles A. Smith, President.
Johanna A. Smith, Vice-President.
Vernon A. Smith, Secretary.
Nann A. Smith, Treasurer.

In view of the fact that the corporation had no funds, and did not desire to dispose of any of its lands, Mr. C. A. Smith proposed to advance the money needed to pay the taxes and other necessary expenses from time to time as required, all advances made by him to draw interest at six per cent (6%). This proposition was accepted by the Board.

Board adjourned.

Dated June 8th, 1907.

VERNON A. SMITH,
Secy.

Pursuant to notice and the Articles of Incorporation, the Annual Stockholders' meeting of this Company was duly called to order at the Company's office in the Andrus Building in the City of Minneapolis, on Tuesday, this the 14th day of January, 1908, at which meeting then were present in person all of the stockholders as follows:

Chas. A. Smith.....998 shares.
Johanna A. Smith.....1 share.
Vernon A. Smith.....1 share.

The President of the corporation, Mr. C. A. Smith, acted as chairman, and the undersigned as Secretary of the Stockholders' meeting.

The Stockholders thereupon elected by unanimous vote of all the stockholders, Directors for the ensuing [540] year, as follows:

Charles A. Smith, Johanna A. Smith and Vernon A. Smith.

There being no further business, the stockholders' meeting adjourned.

Dated January 14th, 1908.

VERNON A. SMITH,
Secy. Stockholders' Meeting.

Immediately after the stockholders' meeting, the Board of Directors met, all present. C. A. Smith acting as chairman and Vernon A. Smith as Secretary.

Officers of the Board were elected each by unanimous vote as follows:

Charles A. Smith, President.
Johanna A. Smith, Vice-President.
Vernon A. Smith, Secretary.
Nann A. Smith, Treasurer.

Board adjourned.

Dated January 14th, 1908.

VERNON A. SMITH,
Secy.

Special Stockholders' meeting Oct. 31, 1908.

A special meeting of the stockholders of the company was this day held pursuant to notice duly given, with all the stockholders of the Company present, each stockholder present holding shares in the Company as follows:

C. A. Smith 984 shares (300 held in pledge by the Swedish American National Bank of Minneapolis, and 10 by C. J. Swanson.)

C. J. Johnson.....15 shares.

Johanna A. Smith.....1 share

[541]

C. A. Smith, the president of the Company, presided at the meeting. Vernon A. Smith, having ceased to be a stockholder and having presented his resignation as Secretary. C. L. Trabert was elected to act as Secretary. On motion of C. J. Johnson, the following resolution was unanimously adopted:

Whereas C. A. Smith is under obligation to the Swedish American National Bank as maker, endorser or surety upon promissory notes amounting in the aggregate to $337,240.45 and accrued interest; and

Whereas C. J. Johnson is under obligation to said Bank as maker, endorser or surety upon promissory notes amounting in the aggregate to $56,450, the notes upon which said Smith and Johnson are so severally liable to said Bank being identical, however to the extent of $12,500; and

Whereas said Bank as collateral security for the notes upon which said Smith is liable to said Bank now holds bonds of the C. A. Smith Lumber Company of Marshfield, Oregon, of the face value of $400,000, and also 300 shares of the stock of said Smith in this Company; and

Whereas C. A. Smith desires by a partial payment upon one or more notes upon which he is liable as aforesaid, and by substituting the security hereinafter mentioned, to procure from said Bank a release and surrender of the said bonds of the C. A. Smith Lumber Company of Marshfield, so as to use the same or the proceeds thereof in payment of other obligations on his part; and

Whereas said Bank is not willing to surrender said bonds unless more than a majority of the capital stock of this company is pledged to it as security for the payment to it of the notes on which said Smith and Johnson are respectively **[542]** liable as aforesaid, in such manner and upon such terms that the stock so pledged may be voted at all the meetings of this company upon all matters pertaining to the business of this Company, and so that the stock so pledged may be represented by a majority of the Board of Directors of this Company and by the executive officers of said Board until the indebtedness for which such stock is pledged is fully paid and satisfied.

Now, Therefore, the consent of the stockholders of this Company is hereby given to said C. A. Smith and said C. J. Johnson assigning and transferring directly to said Bank, or to some person or persons in trust for said Bank, as much of their stock in this Company as they may see fit, as security for their

several, aforesaid obligations to said Bank, and the stockholders of this Company further consent, that such transfer may be made upon such terms that said Bank, or the trustee or trustees holding the same for said Bank, may vote the same at any and all meetings of this Company in any and all matters pertaining to the business of this Company, including the business of selling any property of this Company; and these stockholders hereby further consent that until the indebtedness to secure which any of such stock is or may hereafter be so pledged by said C. A. Smith or C. J. Johnson, is fully paid, the stock securing said indebtedness may be represented upon the Board of Directors of this Company by a majority of the Directors of said Board and by any or all the executive officers of this Company and of said Board, to the end that no indebtedness or liability may be incurred by this Company until the indebtedness for which such stock is or may be pledged is fully paid; and the stockholders of this Company hereby consent to any extension of the payment of said indebtedness, and to the taking [543] of any renewal note or notes for the same.

And to induce said Bank to accept such stock of C. A. Smith and C. J. Johnson in lieu of the aforesaid bonds of C. A. Smith Lumber Company of Marshfield, Oregon, as security for the aforesaid notes and any renewal note or notes for the same,

We, the Stockholders of said Linn and Lane Timber Company, do hereby represent to said Bank that this Company is now without indebtedness or liability of any kind or nature whatsoever.

The foregoing resolution having been adopted, the

resignations of Johanna A. Smith and Vernon A. Smith as directors of the Company were laid before the meeting, and on motion of C. J. Johnson both said resignations were accepted. C. A. Smith having transferred one share of his stock in the Company to B. F. Nelson and one share to C. C. Wyman, with a view of carrying out the transaction contemplated by the foregoing resolution, B. F. Nelson was unanimously elected director of the Company for the unexpired term of said Johanna A. Smith, and C. C. Wyman was unanimously elected director of said Company for the unexpired term of Vernon A. Smith.

The meeting thereupon adjourned.

CHARLES L. TRABERT,
Secretary.

C. A. SMITH,
Pres.

Directors' Meeting October 31, 1908.

Upon the adjournment of the special meeting of the stockholders of this Company, this day held, a meeting of the Board of Directors of the Company was held with all [544] Directors present, namely: C. A. Smith, B. F. Nelson and C. C. Wyman.

The meeting was called to order by C. A. Smith who presided. C. C. Wyman was elected Secretary pro tem. The resignations of C. A. Smith as president, Johanna A. Smith as vice-president, Vernon A. Smith as Secretary and Nann A. Smith as Treasurer were presented to the Board, and on motion of B. F. Nelson, seconded by C. C. Wyman, all four resignations were accepted. On motion of C. A.

Smith, seconded by C. C. Wyman, B. F. Nelson was elected president for the unexpired term of C. A. Smith, resigned. On motion of B. F. Nelson, seconded by C. C. Wyman, C. A. Smith was elected vice-president for the unexpired term of Johanna A. Smith, resigned. On motion of C. A. Smith, seconded by B. F. Nelson, C. C. Wyman was elected secretary for the unexpired term of Vernon A. Smith, resigned, and was also elected treasurer for the unexpired term of Nann A. Smith, resigned.

The meeting thereupon adjourned.

C. C. WYMAN,
Secretary.

Pursuant to notice and the articles of incorporation the annual stockholders' meeting of this Company was duly called to order in the Company's office in the Andrus Bldg., in the city of Minneapolis, Minn., on Tuesday this 12th day of Jan., 1909.

There being no quorum present the meeting was adjourned to meet Jan. 19th, 1909, at one thirty o'clock P. M. in the office of Lind and Ueland, attys. for the corporation.

C. C. WYMAN,
Secty. **[545]**

Minneapolis, Minn., Jan. 19–1909.

Pursuant to notice the adjourned meeting of the stockholders of the Linn & Lane Timber Company was duly called to order at the office of Lind & Ueland in the New York Life Bldg., at Minneapolis, Minn., on Tuesday this 19th day of Jan. at one thirty o'clock P. M.

There were present in person and by proxy all of

the stockholders as follows:

C. A. Smith	representing	475 shares
C. J. Johnson	"	15 "
B. F. Nelson and C. C. Wyman as Trustees		510 "

Mr. C. A. Smith was duly elected chairman and the undersigned as secretary of the stockholders meeting.

The minutes of the former meetings in 1908 were read and the actions taken at such meetings were approved.

Upon motion of Mr. C. J. Johnson, B. F. Nelson, C. A. Smith and C. C. Wyman were nominated as Directors for the ensuing year and the secretary was then instructed to cast a ballot of all the stockholders for C. A. Smith, B. F. Nelson and C. C. Wyman as Directors for the ensuing year; thereupon the secretary so cast a ballot and said directors were declared elected.

There being no further business the meeting thereupon adjourned.

C. C. WYMAN,
Secretary of Stockholders' Meeting.

Immediately after the stockholders' meeting, the Board of Directors met, C. C. Wyman and C. A. Smith being present. C. A. Smith acted as chairman and C. C. Wyman as secretary. **[546]**

The following officers of the board were elected, each by unanimous vote to serve until their successors were elected and duly qualified, Mr. B. F. Nelson, President, Chas. A. Smith Vice-president, and

C. C. Wyman as Secretary and Treasurer.

There being no further business, upon motion of Mr. Wyman, the meeting was thereupon adjourned.

C. C. WYMAN,
Secretary. [547]

Mr. UELAND.—I offer in evidence the records of the Linn and Lane Timber Company of its capital stock with special reference to

Stub and Certificate No. 1.
Stub and Certificate No. 2.
Stub and Certificate No. 3.
Stub and Certificate No. 4.
Stub and Certificate No. 5.
Stub and Certificate No. 6.
Stub No. 7.
Stub and Certificate No. 8.
Stub No. 9.
Stub and Certificate No. 10.
Stub No. 11.
Stub and Certificate No. 12.
Stub and Certificate No. 13.
Stub No. 14.
Stub No. 15.
Stub No. 16.
Stub No. 17.

Mr. McCOURT.—I object to the offer by counsel of all the certificates and stubs with the exception of Nos. 1, 2 and 3, for the reason that it is immaterial and irrelevant; that is, all excepting 1, 2 and 3 are irrelevant.

Objection overruled; exception saved.

Mr. UELAND.—We will make up a copy of the information contained on the certificates and stubs,

and put them in the record subject to your approval.

Mr. McCOURT.—Very well. **[548]**

The Linn & Lane Timber Company's stock records show issuance and transfer of its capital stock, each share $100.00, as follows:

Certificate No. 1, for 1 share:

Issued to Johanna A. Smith June 11, 1906.

Receipted for by her same date.

Certificate assigned to B. F. Nelson, October 31, 1908.

Cancelled same date.

Certificate No. 2, for 1 share:

Issued to John Lind June 11, 1906.

Receipted for by him same date.

Certificate assigned to Vernon A. Smith, Jan. 8, 1907.

And cancelled same date.

Certificate No. 3, for 998 shares:

Issued to Charles A. Smith, June 11, 1906.

Receipted for by him on same date.

Surrendered and cancelled for re-issue Feb. 14, 1908.

Certificate No. 4 for 1 share:

Issued January 8, 1907, to Vernon A. Smith.

Receipted for by him January 8, 1908.

Same being issued in place of Certificate No. 2 to John Lind.

Certificate assigned to C. A. Smith, Oct. 31, 1908,

And cancelled same date.

Certificate No. 5, for 300 shares:

Issued February 14, 1908, to the Swedish-American National Bank of Minneapolis, in the fol-

lowing language: "This certifies that the Swedish-American National Bank of Minneapolis is the owner of 300 shares of $100.00 each of the capital stock of the Linn & Lane Timber Co., which it holds as collateral security for advances and loans made and to be made to Charles A. Smith, Pledgor."

Certificate receipted for February 14, 1908, by N. O. Werner, President.

Certificate issued in part in place of Certificate No. 3 for 998 shares to Charles A. Smith.

Certificate transferred in blank by the Swedish-American National Bank of Minneapolis, per J. A. Latta, Vice-President and E. L. Mattson, Cashier.

And cancelled April 6, 1909. **[549]**

Certificate No. 6, for 15 shares:

Issued February 15, 1908, to Charles J. Johnson.

Receipted for by him same date.

Issued in part in place of original Certificate No. 3 for 998 shares, to Charles A. Smith.

Certificate assigned by C. J. Johnson to Swedish-American National Bank of Minneapolis, Oct. 31, 1908. Assignment contains this language: "This transfer is made to secure obligations of C. J. Johnson and C. A. Smith described in the resolution of the stockholders this day adopted."

Certificate cancelled October 31, 1908.

Certificate No. 7, for 10 shares:

Issued February 27, 1908, to Charles A. Smith.

Receipted for by him same date.

Assigned to Charles J. Swanson as collateral.

Certificate issued in part in place of original certificate No. 3 for 998 shares to Charles A. Smith.

Certificate No. 8, for 673 shares:

Issued to Charles A. Smith, February 28, 1908.

Receipted for by him same date.

Issued in part in place of original certificate No. 3 for 998 shares to Charles A. Smith.

208 shares included in certificate assigned by C. A. Smith to Swedish-American National Bank of Minneapolis, October 31, 1908, the assignment containing this language: "This transfer is made to secure the obligation of C. A. Smith and C. J. Johnson described in the resolution of the stockholders this day adopted."

Certificate cancelled October 31, 1908.

Certificate No. 9 for 1 share:

Issued October 31, 1908, to B. F. Nelson, Trustee.

Receipted for by him same date.

Issued in place of original certificate No. 1, for one share to Johanna A. Smith.

Certificate No. 10 for 1 share:

Issued October 31, 1908, to C. A. Smith.

Receipted for by him same date.

Issued in place of Certificate No. 4 for 1 share to Vernon A. Smith.

Certificate assigned by C. A. Smith to C. C. Wyman, October 31, 1908, and cancelled the same date.

Certificate No. 11, for 1 share:

Issued October 31, 1908, to C. C. Wyman, Trustee.

Receipted for by him same date.

Issued in place of Certificate No. 10 for 1 share to C. A. Smith.

Certificate No. 12, for 15 shares:

Issued October 31, 1908, to Swedish-American National Bank of Minneapolis. **[550]**

Certificate No. 12 (Continued).

Certificate contains this language: "This certificate is held as collateral security, being pledged by C. J. Johnson."

Certificate issued in place of Certificate No. 6, for 15 shares to C. J. Johnson.

Certificate receipted for October 31, 1908, by N. O. Werner, President.

Certificate assigned in blank by the Swedish-American National Bank of Minneapolis, by J. A. Latta, Vice-President; E. L. Mattson, Cashier.

And cancelled April 6, 1909.

Certificate No. 13, for 208 shares:

Issued October 31, 1908, to Swedish-American National Bank, Minneapolis.

Certificate contains this language: "This certificate is held as collateral security, being pledged by C. A. Smith."

Certificate receipted for October 31, 1908, by N. O. Werner, President.

Certificate issued in part in place of Certificate No. 8 for 673 shares to C. A. Smith.

Certificate assigned in blank by the Swedish-American National Bank of Minneapolis by J. A. Latta, Vice-President; E. L. Mattson, Cashier.

Certificate cancelled April 6, 1909.

Certificate No. 14 for 465 shares:

Issued October 31, 1908, to C. A. Smith.

Receipted for by him on same date.

Issued in part in place of Certificate No. 8, for 673 shares, to Charles A. Smith.

Certificate No. 15, for 300 shares:

Issued April 6, 1909, to the Northwestern National Bank of Minneapolis, Minnesota, "as Collateral account of Charles A. Smith."

Transferred from the Swedish-American National Bank of Minneapolis.

Issued in place of Certificate No. 5 for 300 shares to the S.-A. National Bank of Minneapolis.

Certificate receipted for by J. A. Latta, Vice-President of date April 6, 1909.

Certificate No. 16, for 15 shares:

Issued April 6, 1909, to Northwestern National Bank of Minneapolis, Minnesota.

Certificate stub contains this language: "This certificate is held as collateral security being pledged by C. J. Johnson."

Transferred from the Swedish-American National Bank of Minneapolis.

Issued in place of Certificate No. 12 for 15 shares to the Swedish-American National Bank of Minneapolis.

Certificate*d* receipted for by J. A. Latta, Vice-President, April 6, 1909. **[551]**

Certificate No. 17, for 208 shares:

Issued April 6, 1909, to the Northwestern National Bank of Minneapolis, Minnesota.

Certificate stub contains this language: "This certificate is held as collateral security, being

pledged by C. A. Smith. From whom transferred: The Swedish-American National Bank of Minneapolis."

Certificate issued in place of Certificate No. 13 for 208 shares, to the Swedish-American National Bank of Minneapolis.

Certificate receipted for by J. A. Latta, Vice-President, April 6, 1909. **[552]**

Mr. LIND.—Will the District Attorney admit that the Linn and Lane Timber Company complied with the laws of the State of Oregon and paid its corporate fee during the years of its existence, up to and including 1909?

Mr. McCOURT.—Yes, I will admit that.

Mr. UELAND.—The defendants offer in evidence this document dated October 31, 1908, it being a document showing a pledge of a majority of the stock of the Linn and Lane Timber Company to the Swedish-American National Bank of Minneapolis, to secure certain large indebtedness on the part of the stockholders.

Mr. McCOURT.—Objected to as immaterial for the same reasons as given with reference to the objection to the admission of stock certificates. That it is shown by the pleadings and the records themselves, that at the organization of this corporation or shortly thereafter there were subscribed and issued all of the capital stock of the company, one share to John Lind, one to Johanna A. Smith, and 998 shares to C. A. Smith. Any subsequent division or transfer of the stock could in no way affect the notice that might be brought to this corporation of prior fraud relating

to the title to the lands which it secured, and on account of which it is made a defendant here now.

Objection overruled; exception saved.

Marked Defendants' Exhibit "B."

Mr. McCOURT.—While I don't wish to require any identification for these signatures upon this instrument, I don't want to admit it without an opportunity to ascertain further whether it was actually made when it purports to be. If you tell me that it was executed the 31st day of October—

Mr. UELAND.—If you will take my word for it; I don't ask you to do that.

Mr. McCOURT.—You say it was executed October 31st?

Mr. UELAND.—I do. **[553]**

Mr. McCOURT.—Then it can be admitted subject to the objections previously made?

In relation to the minutes of the corporation that you have introduced, I want to make a similar statement in regard to that same date—October 31st, to know whether or not they were made at that time.

Mr. UELAND.—I give my word as to that, if that satisfies you.

Mr. McCOURT.—I am satisfied.

Mr. UELAND.—Before I offer this next document in evidence, I want to state to the Court that in the answers it is averred that after a majority of the stock of this company had been pledged as shown by the minutes and by the documents just received, the Northwestern Bank of Minneapolis, acquired by purchase the note secured and the property pledged. The fact of it was that in November, 1908, the Swed-

ish-American National Bank consolidated in a manner with the Northwestern National Bank, so that all of its assets went from the Swedish-American to the Northwestern. This document is offered for the purpose of showing such transfer and that the Northwestern National Bank now holds the stock and is the owner of the indebtedness for which the stock was pledged. This document is dated subsequent to the commencement of this suit.

Mr. McCOURT.—The same objection is urged to this as was made to the admission of stock, occurring subsequent to the formation of the corporation.

You know this to have been made when it purports to have been made?

Mr. UELAND.—I know of the transfer I speak of, but I was not present when that document was made and I didn't make it. **[554]**

Mr. McCOURT.—You know it was made about that time?

Mr. UELAND.—I have no moral doubt about it.

Mr. McCOURT.—No requirement to be made of the proof of its execution beyond what it shows on its face.

Marked Defendants' Exhibit "C."

Mr. UELAND.—May it please the Court, "Defendants' Exhibits 'C' and 'D' for Identification" in case No. 3320, purport to be two deeds from C. A. Smith and wife to the Linn and Lane Timber Company, one for lands in Linn County, and one for lands in Douglas County in this State. Both bear date the 4th day of June, 1906. The same as the deed as to which some inquiry has been made. At some time or other we

will offer these two deeds to show that they, together with the deed of June 4, 1906, already in evidence, constitute the conveyance for which the stock of the company was issued under the resolution of the stockholders of June 9, 1906.

Mr. LIND.—Not as substantive evidence, only as showing the entire transaction recorded in the minutes of the corporation.

Mr. UELAND.—But whether counsel is willing to have these admitted at this time without further proof, of course, will be for him to say.

Mr. McCOURT.—I would not feel justified in admitting them at this time. They purport to be made the same date as the deed which we question bears, at the same time and under similar circumstances.

Mr. UELAND.—Well, we will wait.

Mr. LIND.—It is understood that the evidence just offered and received is equally applicable in either suit.

COURT.—It might be well that counsel should enter into a general stipulation that all the evidence applicable might be transferred.

Mr. GEARIN.—It is understood that anything that is [555] applicable may be used in either suit, No. 3319 or No. 3320.

Whereupon proceedings herein adjourned. [556]

Defendants' Exhibit "B."

(Defts. Exhibit "I.")

WHEREAS, C. A. Smith is under liability on the promissory notes described in schedule A and C. J. Johnson on the promissory notes described in schedule B below, to the Swedish American National

Bank of Minneapolis (the last four notes on each schedule being identical):

SCHEDULE A.

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
May 5, '06.	C. A. Smith		Demand	$ 7100.00
Dec. 31, '06.	C. A. Smith		"	11440.00
Apr. 25, '08.	E. D. A. Whitney Eliza B. Whitney	Frank N. Barons C. A. Smith	Oct. 26, '08.	18700.45
Aug. 3, '08.	Mereen Johnson Mch. Co. by Edgar Dalzell	C. A. Smith	Nov. 2, '08.	2000.00
Aug. 24, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Dec. 24, '08.	5000.00
Sep. 2, '08.	Mereen Johnson Mch. Co. by Edgar Dalzell	C. A. Smith	Mch. 2, '09.	4000.00
Sep. 4, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Jan. 4, '09.	5000.00
Sep. 28, '08.	C. A. Smith Lumber & Mfg. Co. by Chas. L. Trabert, Sec.	C. A. Smith	Oct. 28, '08.	10000.00
Sep. 21, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Jan. 21, '09.	5000.00
Oct. 3, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Feb. 3, '09.	5000.00
Oct. 12, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Feb. 12, '09.	3000.00
Jul. 6, '08.	C. A. Smith Timber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 6, '08.	25000.00
Jul. 10, '08.	C. A. Smith Timber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 10, '08.	10000.00
Aug. 12, '08.	C. A. Smith Timber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 12, '08.	40000.00
Sep. 8, '08.	C. A. Smith Timber Co. by C. A. Smith, Pt.	C. A. Smith	Feb. 8, '09.	10000.00
[557]				
Jul. 10, '08.	C. A. Smith Lumber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 10, '08.	$10000.00
Aug. 27, '08.	C. A. Smith Lumber Co. by C. A. Smith, Pt.	C. A. Smith	Dec. 28, '08.	30000.00
Jul. 30, '08.	C. A. Smith Lumber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 30, '08.	35000.00
Jul. 16, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. A. Smith W. E. Maunsel	Nov. 16, '08.	3500.00
Oct. 5, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. A. Smith W. E. Maunsel	Jan. 4, '09.	10000.00
Oct. 7, '08.	N. W. Compo-Board Co. by C. J. Johnson, V. Pt.	C. A. Smith C. J. Johnson Wm. H. Springer	Nov. 6, '08.	25000.00

Date.	Maker.	Endorser or Surety.	Maturity.	Amou
Aug. 31, '08.	S. E. Oscarson Co. by S. E. Oscarson, Sec.	S. E. Oscarson C. A. Smith C. J. Johnson	Oct. 30, '08.	1000.
Oct. 24, '08.	S. E. Oscarson Co. by S. E. Oscarson, Sec.	S. E. Oscarson C. A. Smith C. J. Johnson	Nov. 23, '08.	8000.
Sep. 28, '08.	Johnson & Co. by J. T. Hovren, Sec.	C. A. Smith J. T. Hovren C. J. Johnson	Nov. 2, '08.	1000.
Sep. 2, '08.	Johnson & Co. by J. T. Hovren, Sec.	C. A. Smith J. T. Hovren C. J. Johnson	Dec. 15, '08.	2500.

SCHEDULE B.

Date.	Maker.	Endorser or Surety.	Maturity.	Amoun
Jul. 13, '08.	C. J. Johnson		Jan. 13, '09.	$25000.
Jul. 15, '08.	C. J. Johnson		Jan. 15, '09.	2500.
Sep. 18, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. J. Johnson W. E. Maunsell	Nov. 17, '08.	5000.
Sep. 14, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. J. Johnson W. E. Maunsell	Dec. 14, '08.	4000.
Sep. 14, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. J. Johnson W. E. Maunsell	Dec. 14, '08.	2500.
Sep. 23, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. M. Amsden W. E. Maunsell C. J. Johnson	Jan. 23, '09.	3950.
[558]				
Oct. 3, '08.	N. W. Luth. Bd. of Education, by E. O. Stone, Pt., Axel Anderson, Sec.	Axel Anderson E. O. Stone E. G. Dahl C. J. Johnson	Jan. 4, '09.	$1000.
Aug. 31, '08.	S. E. Oscarson Co. by S. E. Oscarson, Sec.	C. A. Smith S. E. Oscarson C. J. Johnson	Oct. 30, '08.	1000.
Oct. 24, '08.	S. E. Oscarson Co. by S. E. Oscarson, Sec.	C. A. Smith S. E. Oscarson C. J. Johnson	Nov. 23, '08.	8000.
Sep. 28, '08.	Johnson & Co. by J. T. Hovren, Sec.	C. A. Smith J. T. Hovren C. J. Johnson	Nov. 2, '08.	1000.
Sep. 2, '08.	Johnson & Co. by J. T. Hovren, Sec.	C. A. Smith J. T. Hovren C. J. Johnson	Dec. 15, '08.	2500.

WHEREAS the Bank holds bonds of C. A. Smith Timber Company of Marshfield, Oregon, to the amount of $400,000 face value, and 300 shares of the stock of the Linn and Lane Timber Company (said shares being evidenced by certificate No. 5) as security for the notes described in schedule A, and C. A. Smith desires to have these bonds released;

WHEREAS it has been agreed between C. A. Smith and C. J. Johnson on the one hand, and the Bank on the other hand, that the Bank will release these bonds in consideration of 210 shares of C. A. Smith, in addition to the 300 shares above mentioned, and 15 shares of C. J. Johnson in said Timber Company being pledged for the payment of the notes described in schedules A and B;

WHEREAS C. A. Smith has accordingly transferred 208 such additional shares to said Bank as pledgee, and one share to B. F. Nelson, Trustee, and one share to C. C. Wyman, Trustee, the 208 shares being evidenced by certificate No. 13, the other 2 shares by certificates numbered respectively 9 and 10, and C. J. Johnson has also accordingly transferred his said 15 shares to the Bank as pledgee, the same being evidenced by certificate No. 12; [559]

WHEREAS it is intended that the 525 shares thus pledged to the Bank, the same constituting more than a majority of the stock of said Timber Company, shall give the pledgee such control that no indebtedness or liability on the part of the Timber Company should be contracted without the consent of the pledgee, until the indebtedness to the pledgee is fully paid.

NOW, THEREFORE, in consideration of the release of said bonds and the extension of payment hereinafter mentioned, and the transfer of said 225 additional shares of said Timber Company, IT IS HEREBY MUTUALLY AGREED between C. A. Smith and C. J. Johnson, hereinafter designated as pledgors, and The Swedish American National Bank, hereinafter designated as pledgee, as follows:

1. The 525 shares of stock in the Linn and Lane Timber Company transferred by the pledgors to the pledgee, the same including the 2 shares transferred to B. F. Nelson and C. C. Wyman, herein designated as trustees, shall be held by the pledgee and trustees respectively as security for the payment of the notes described in schedules A and B, and for the payment of any renewal note or notes which may hereafter be taken for the same.

2. The 523 shares which have been transferred to the pledgee the secretary of the Linn and Lane Timber Company is hereby authorized and directed, whenever requested by the pledgee, to transfer on the books of the Company to the trustees, or either of them, to the end that the right of the trustees, or either of them, to vote these shares at all meetings of the corporation may not be questioned.

3. The pledgors hereby constitute and appoint each of the trustees their true and lawful attorney and proxy, irrevocable as long as the aforesaid shares remain pledged, to vote said shares or any of them, at any and all meetings of the corporation, in any and all matters pertaining to the business of the corporation, **[560]** including the selling of its property, and the election of directors and

officers, and as long as said shares, or any of them, remain pledged, the pledgors will not question the right of either of said trustees to hold and exercise the offices of director, president, secretary or treasurer of said corporation.

4. Except as to $50,000 which C. A. Smith has paid on the indebtedness for which the bonds were pledged (the notes described in schedule A representing his obligations after such payment) and except as to $100,000 additional which he will pay, if possible, within 60 days, he shall be entitled to an extension until one year from the date hereof, for the payment of the notes described in schedule A.

5. The pledgors hereby waive demand, protest and notice of dishonor as to the notes described in schedules A and B, and as to any renewal note or notes for the same, and consent hereby to the extension or renewal of any of said notes, and of any such renewal note or notes, and hereby agree that no omission or laches on the part of the pledgee, or its assigns, in fixing or enforcing the liability of any person or party other than the pledgors, upon any of said notes, or renewal note or notes, shall release or discharge the pledgors from liability on such notes or renewal note or notes.

6. In case of default in the payment of the notes, or any renewal note or notes, for which said 525 shares are pledged, the pledgee or trustees, or either of them, may sell a sufficient number of said shares to pay what may then be past due and payable on such notes, together with the expenses of the sale, and if such sale is made at any broker's board, or at public sale, the pledgee and trustees, may be-

come purchasers, but no such sale shall be made on less than 30 days' notice to the pledgors.

7. If either of the trustees shall at any time be unable or unwilling to act as contemplated by this agreement, the pledgee **[561]** may appoint another person in his place, and the person so appointed shall have all the rights, powers and privileges of his predecessor.

8. In case of sale by the pledgee or trustees of any of said shares, the 510 shares pledged by C. A. Smith shall first be sold to pay the notes described in schedule A and the 15 shares pledged by Johnson shall first be sold to pay the notes described in schedule B, except that as to the notes which are included in both said schedules, the pledgee or trustees may elect which of said shares to sell first.

9. When the notes described in schedules A and B and the renewal note or notes which may be taken for the same are paid, the pledgee and trustees respectively shall transfer back to C. A. Smith the shares pledged by him then remaining unsold, and to C. J. Johnson the shares pledged by him and then unsold, and shall account to each for any surplus remaining of the proceeds after applying such proceeds upon the indebtedness for which said stock is pledged.

10. This agreement shall be binding on the heirs, executors and administrators of the pledgors and on the successors and assigns of the pledgee, and on the successors in trust of each of the trustees.

Signed in triplicate at Minneapolis, October 31, 1908.

C. A. SMITH.
C. J. JOHNSON.

THE SWEDISH-AMERICAN NATIONAL BANK OF MINNEAPOLIS.

[Seal] By N. O. WERNER, President.
E. L. MATTSON, Cashier.

We hereby accept the trust declared in the foregoing agreement.

B. F. NELSON.
C. C. WYMAN.

Filed May 10, 1910. G. H. Marsh, Clerk.

[562]

Defendants' Exhibit "C."

(Defts. Exhibit "J.")

WHEREAS, By a contract in writing made in triplicate at Minneapolis, Minnesota, and dated October 31st, 1908, by and between C. A. Smith, C. J. Johnson and the Swedish-American National Bank of Minneapolis, one of said triplicate contracts being hereto attached, made a part hereof and marked Exhibit "A," the said C. A. Smith and C. J. Johnson assigned and transferred to said Swedish-American National Bank five hundred and twenty-three (523) shares, and to C. C. Wyman and B. F. Nelson, as Trustees for said Swedish-American National Bank, one (1) share each, of the capital stock of Linn & Lane Timber Company, a corporation of the State of Minnesota, as collateral security for the payment of certain promissory notes or other obligations owned by said Swedish-American National Bank, and upon which said Smith and

Johnson, or one of them, were liable as makers, endorsers, guarantors or in some other capacity, schedules of which said notes, marked Schedule "A" and Schedule "B," were included in and formed a part of said agreement; and

WHEREAS, Said B. F. Nelson and said C. C. Wyman accepted the trust in said agreement specified and received each one share of said capital stock, and the said five hundred and twenty-three (523) shares of said capital stock were issued to and received by said Swedish-American National Bank, a part of which agreement was that said B. F. Nelson and C. C. Wyman should become directors and officers of said Linn & Lane Timber Company, and that all of said stock so transferred to them and to said Swedish-American National Bank should be voted by said Trustees at all meetings of the stockholders of said Company so long as said agreement remained in force, and at the request of said bank said stock should all be [563] issued to said Trustees so as to secure their right to vote the same at any meeting of the stockholders of said Company, and that said Trustees should also, upon request of said Bank, act as executive officers of said Company, all of which stipulations and agreements were authorized, ratified and approved by all of the stockholders of said Linn & Lane Timber Company at a meeting thereof duly held on the 31st day of October, 1908; and

WHEREAS, Since the making of said agreement and the transfer of said stock as security for said indebtedness, said indebtedness mentioned in said Schedules "A" and "B" has been sold, assigned and

transferred to the Northwestern National Bank of Minneapolis, Minnesota, and the said stock in said Linn & Lane Timber Company, so pledged as security for the payment of said indebtedness, has also been assigned and transferred for the same purpose to said Northwestern National Bank, which said last named Bank has assumed and does hereby assume the obligations of said Swedish-American National Bank in said agreement specified, relating to the extension and carrying of the notes and indebtedness in said Schedules "A" and "B" mentioned:

NOW THEREFORE, In consideration of the premises, and of the sum of one dollar each to the other in hand paid, the receipt whereof is hereby acknowledged, it is mutually covenanted and agreed by and between C. A. Smith, C. J. Johnson, the Northwestern National Bank of Minneapolis, and B. F. Nelson and C. C. Wyman, as Trustees, that the said five hundred and twenty-five (525) shares of the capital stock of said Linn & Lane Timber Company are held and shall be held by said Northwestern National Bank and by said Trustees as security to said Northwestern National Bank, its successors and assigns, for the payment of the notes and indebtedness mentioned in said Schedules "A" and "B," and for any renewals thereof, or any new notes already given or hereafter to be given in place of any **[564]** of the indebtedness mentioned in said Schedules "A" abd "B" or either of them, and as security for the payment of all notes now held by said Northwestern National Bank upon which said C. A. Smith and C. J. Johnson, or either of them, are in any way responsible or liable either

as makers, endorsers, guarantors or otherwise, and for the payment of any note or notes hereafter given to said Northwestern National Bank, its successors or assigns, in renewal or in place of any of said notes, schedules of which said notes so held by said Northwestern National Bank, marked, respectively, Schedule "A–2" and Schedule "B–2," are hereto attached and made a part hereof.

And it is hereby agreed that the said B. F. Nelson and C. C. Wyman, Trustees, shall continue to act as Trustees for said Northwestern National Bank, and agree to so act by their consent thereto endorsed hereon and signed by each of them.

And it is agreed that all the rights, interest and security held by said Swedish-American National Bank under said agreement and in and to said stock has been transferred to and is now held, owned and possessed by said Northwestern National Bank, its successors and assigns, with the same force and effect in all respects, for the purpose of securing payment of the notes in said Schedules "A" and "B," and Schedules "A–2" and "B–2" and any renewals thereof, and any new notes given in place of any thereof, as the same was held, owned and possessed under said contract by said Swedish-American National Bank; and that the Northwestern National Bank has the same rights in said stock as security, and the same right to enforce and foreclose the same, as was held or possessed by said Swedish-American National Bank before the sale by it to said Northwestern National Bank of the obligations secured thereby, and the transfer by it to said Northwestern National Bank of such security.

IN WITNESS WHEREOF, This agreement has been executed [565] in triplicate this 12th day of December, A. D. 1908.

C. A. SMITH.
C. J. JOHNSON.

THE NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS,
By E. M. DECKER,
Vice-president.
J. E. HOLTON, [Seal]
Cashier.

We consent to the above.

B. F. NELSON.
C. C. WYMAN. [566]

"SCHEDULE A-2."

Promissory Notes on Which C. A. Smith is Liable.

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
Nov. 28, '08.	C. A. Smith		Demand	$19493.77
Nov. 4, '08.	C. A. Smith		Demand	19721.18
Sept. 8, '08.	C. A. Smith Timber Co. by C. A. Smith, Pres.	C. A. Smith	Feb. 8, '09.	10000.00 Pd
Nov. 12, '08.	C. A. Smith Timber Co. by C. J. Johnson, V. Pres.	C. A. Smith	Feb. 13, '09.	40000.00 Pd
Nov. 6, '08.	C. A. Smith Timber Co. by C. J. Johnson, V. Pres.	C. A. Smith	Mch. 6, '09.	25000.00 Pd
Nov. 10, '08.	C. A. Smith Timber Co. by C. J. Johnson, V. Pres.	C. A. Smith	Mch. 10, '09.	10000.00 Pd
Aug. 27, '08.	C. A. Smith Lbr. Co. by C. A. Smith, Pres.	C. A. Smith	Dec. 28, '08.	30000.00
Nov. 10, '08.	C. A. Smith Lbr. Co. by C. J. Johnson, V. Pres.	C. A. Smith	Mch. 10, '09.	10000.00 Pd 20
Nov. 30, '08.	C. A. Smith Lbr. Co. by C. A. Smith, Pres.	C. A. Smith	Mch. 30, '09.	35000.00 Pd
Nov. 2, '08.	Mereen Johnson Mch. Co. by Robt. A. Johnson, Secy.	Robt. A. Johnson C. A. Smith	Feb. 2, '09.	2000.00 Pd
Sept. 2, '08.	Mereen Johnson Mch. Co. by Edgar Dalzell	C. A. Smith	Mch. 2, '09.	4000.00 Pd
Oct. 28, '08.	C. A. Smith Lbr. & Mfg. Co. by C. A. Smith, Pres.	C. A. Smith	Mch. 1, '09.	10000.00 Pd
Nov. 6, '08.	N. W. Compo-Board Co. by C. J. Johnson, V. Pres.	C. A. Smith	Mch. 6, '09.	25000.00

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
Aug. 24, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Dec. 24, '08.	5000.00
Sept. 4, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Jan. 4, '09.	5000.00
Sept. 21, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Jan. 21, '09.	5000.00
Oct. 3, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Feb. 3, '09.	5000.00 Pd
Oct. 12, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Feb. 12, '09.	3000.00
Sept. 2, '08.	Johnson & Co. by J. T. Hovren, Secy.	C. A. Smith J. T. Hovren C. J. Johnson	Dec. 15, '08.	2500.00
Nov. 23, '08.	S. E. Oscarson Co. by S. E. Oscarson, Secy.	C. A. Smith S. E. Oscarson C. J. Johnson	Dec. 23, '08.	8000.00
Oct. 5, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsell C. A. Smith	Jan. 4, '09.	10000.00
Nov. 16, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsell C. A. Smith	Mch. 16, '09.	3500.00
[567]				276,214.95

"SCHEDULE B-2."

Promissory Notes on Which C. J. Johnson is Liable.

Date.	Maker.	Endorser, or Surety.	Maturity.	Amount.
July 13, '08.	C. J. Johnson		Jan. 13, '09.	25000.00
July 15, '08.	C. J. Johnson		Jan. 15, '09.	2500.00
Sept. 14, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsell C. J. Johnson	Dec. 14, '08.	2500.00
Sept. 14, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsell C. J. Johnson	Dec. 14, '08.	4000.00
Sept. 23, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsell C. J. Johnson C. M. Amsden	Jan. 23, '09.	3950.00
Nov. 17, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsell C. J. Johnson	Feb. 15, 09.	5000.00
Nov. 9, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsell C. J. Johnson	Feb. 8, '09.	5500.00
Nov. 2, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsell C. J. Johnson	Feb. 1, '09.	1000.00
Nov. 13, 08.	N. W. Lutheran Board of Education, by E. O. Stone Pt. Axel Anderson, Secy.	Axel Anderson E. O. Stone E. G. Dahl C. J. Johnson	Feb. 11, '09.	1500.00
Sept. 2, '08.	Johnson & Co. by J. T. Hovren, Secy.	J. T. Hovren C. A. Smith C. J. Johnson	Dec. 15, '08.	2500.00

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
Nov. 23, '08.	S. E. Oscarson & Co. by S. E. Oscarson, Secy.	S. E. Oscarson C. A. Smith C. J. Johnson	Dec. 23, '08.	$8000.00
Oct. 3, '08.	N. W. Lutheran Board of Education, by E. O. Stone, Pt., Axel Anderson, Secy.	Axel Anderson C. J. Johnson E. O. Stone E. G. Dahl	Jan. 4, '09.	1000.00

Filed May 10, 1910. G. H. Marsh, Clerk. [568]

[Proceedings Had May 5, 1910, 9 A. M.]

Portland, Ore., May 5, 1910, 9 A. M.

Mr. UELAND.—May it please the Court, in case 3319 I would like to make a similar motion to what we made yesterday in 3320. So we move, on behalf of the defendants whom we represent, that the evidence be stricken out that has been introduced in the case on the theory of a conspiracy as charged in the bill. The evidence would be hearsay and incompetent, but for the alleged conspiracy on the ground that it appears from the evidence, introduced in the case, in connection with the statement of the District Attorney that he does not intend to introduce further evidence to sustain the charges of conspiracy, that there was no conspiracy on the part of any of the defendants whom we represent in the entries attacked in this suit.

COURT.—Same ruling. (I would not want as at present advised, to sustain the motion to strike this from the record, because it is a negative proceeding, and ought to be submitted when the case is submitted, and your objection will save that question for you until the final hearing.)

Exception saved.

Mr. McCOURT.—I don't know whether counsel

understood that I intended to introduce a little more evidence in 3319.

Mr. UELAND.—I may renew the motion later on, then. **[569]**

[Testimony of John Van Zante, for Defendants.]

JOHN VAN ZANTE, a witness called on behalf of the defense, being first sworn, testified as follows:

Direct Examination.

(Questions by Mr. LIND.)

Where do you reside? A. In the city.

Q. Portland? How long have you resided here?

A. 22 years.

Q. What is your profession?

A. I am practicing law.

Q. How long have you practiced law?

A. Since the fall of 1897.

Q. During that period have you held any public office?

A. I was Municipal Judge of the city from June, 1908, to June, 1909—July, 1908, to July, 1908.

Q. It has appeared on the testimony in this case that you were present at some examinations conducted by a special agent of the Interior Department by the name of Stratford in connection with the investigation of the claims—entries involved in this suit. Will you kindly state at whose instance and under what circumstances you were present at that examination and what you did and observed in connection with it.

A. I was there at the instance of Mr. Kribs. This examination was held by Mr. Stratford.

Q. At what time?

A. At Wodtli's farm. He has a farm just west

(Testimony of John Van Zante.)

of Foster, I think it is. I think it is west about half a mile, and I don't remember the year, but it must be eight or nine **[570]** years ago.

Q. Who first suggested the matter to you to attend that examination?

A. I was employed by Mr. Kribs, but I think Judge Tanner asked me whether I was so I could make a short trip. But I was employed by Mr. Kribs.

Q. What did you do?

A. Why, I went up there and I attended the examination of those applicants and brought home copies of the affidavits that they made.

Q. Where did you meet Mr. Stratford?

A. I think at Foster.

Q. Had you known him previously?

A. I am not sure about that, whether I met him at Foster or whether I met him here at Portland. I am not sure about that.

Q. What did you do in connection with the work?

A. Well, I just listened to what they had to say about their filings, and after the affidavits were drawn up I read them over to the party making the affidavit and if there were any corrections to be made in them, as will show in the originals—some of them, I think, were corrected, by pen probably—and then they were sworn to by the applicant, or were signed by the applicant, rather.

Q. Now, who conducted the examination?

A. Mr. Stratford.

Q. Was there a stenographer or typewriter present who took down the questions and answers?

(Testimony of John Van Zante.)

A. Yes, a Miss Harkness from Albany was the stenographer, and it was taken down on the machine, rather slow work.

Q. Did you conduct any part of the examination? Did you [571] ask any questions?

A. I don't think I asked a question. I made a suggestion one time; I remember that Mr. Stratford referred to it as "fraudulent entries," and I think I made a suggestion that it would be better I thought, if they were referred to as the "alleged fraudulent entries." I have no other recollection of asking any questions or making suggestions.

Q. Who asked the questions?

A. Mr. Stratford.

Q. Were the answers taken down as given by the witness? A. They were.

Q. Did you observe anybody framing or suggesting answers?

A. There was nothing like that done there at all—not in the room, not where we were.

Q. Did you observe anything outside the room of that character?

A. Well, there were a number of people there. There were six or eight or maybe ten of them there at times, and they would stand around outside. We couldn't accommodate all of them inside.

Q. Well, did you hear anything in the way of framing or suggesting on the outside?

A. No, not a thing.

Q. Now, in regard to that examination generally—first, I will ask you how many days did you participate in the examinatinon of those entrymen?

(Testimony of John Van Zante.)

A. I don't remember. When I got there—we were there without a stenographer, and I telephoned I think, to the County Clerk at Albany to send out a stenographer and a machine. Inasmuch as it would take so long to take them down in long hand and I wanted copies of them. I don't **[572]** remember the number of days I was out there. Possibly a week.

Q. Now, during the time that these affidavits were taken, did you observe any improper conduct on the part of anyone connected with the work? If so, I wish you would state frankly.

A. No; everything was conducted there in a quiet, orderly manner as far as I could see.

Q. Well, the questions that appear in the affidavits were actually put to the witnesses?

A. Every question that appeared in those affidavits were put to the witnesses and the answers were given by them, and they were read over to them, or read by them. I am not sure that I read all of them to them; and then they were signed and each applicant was sworn before he gave any testimony.

Q. You kept duplicates? A. How?

Q. You kept duplicates?

A. I kept a carbon copy.

Q. Carbon copies? A. Carbon copies.

Q. What did you do with them?

A. I turned those over to Judge Tanner.

Q. Do you recall what instructions, if any, Judge Tanner gave you before you started out?

A. I think I got my instructions from Mr. Kribs.

Q. Well, what did Mr. Kribs tell you?

(Testimony of John Van Zante.)

A. He wanted carbon copies and wanted me to attend that investigation up there; that there was some questions about the entries and there was a Special Agent going up there and he wanted me to be there and attend that. **[573]**

Cross-examination.

(Questions by Mr. McCOURT.)

Were you in the office of Mitchell and Tanner at that time? A. No.

Q. That is, a member of the firm?

A. No, I was on the same floor with them—a few doors away from them.

Q. Who introduced you to Mr. Stratford?

A. I didn't hear that.

Q. I say, who introduced you to Mr. Stratford?

A. I don't remember how I met him. It may be I met him at the hotel at Stratford—or at Foster.

Q. Well, I understood you to say you possibly met him here in Portland.

A. Well, yes, I am not sure as to where I met him.

Q. You preceded Mr. Stratford out there to Foster, didn't you? Didn't you go out there before he got there?

A. Yes, I was there at the hotel maybe a day before. I am not sure about that.

Q. And didn't Miss Harkness go out there with him?

A. No, I think she came afterward. I am quite sure she came afterwards, for there was no stenographer there, and I think I telephoned to the County Clerk after Mr. Stratford was there. I am quite

(Testimony of John Van Zante.)

sure I did.

Q. Who else was there? Was the Mealey boys there? A. Who—yes.

Q. John A. Thompson?

A. Yes, Thompson was there and Malone—

Q. That is the entryman Malone?

A. —and Wodtli. [574]

Q. The entrymen were all there who made affidavits?

A. Not the first day—the first day of the examination. They were brought in from time to time.

Q. And the Mealey boys were busy, were they not, getting the entrymen in to make affidavits?

A. Yes, they were around there most of the time —possibly all the time.

Q. They were quite active in— A. Yes.

Q. —seeing that the thing was expedited?

A. Yes, they had the men there right along, and so was Thompson about the same, I suppose.

Q. Who was in the room while the affidavits were being taken?

A. Well, at times I suppose there were six or seven of them in there. There would be Mr. Stratford, Miss Harkness, myself, I think were there all the time, and the Mealeys were in there at times; Thompson and some of the entrymen.

Q. Usually only one entryman at a time was there?

A. No, I think there would be different ones—sometimes there would be probably two or three of them, or four.

Q. At a time? A. Yes, I think so.

(Testimony of John Van Zante.)

Q. Well, is your mind clear upon that question?

A. Quite clear, because the room was crowded.

Q. Well, wasn't it apparent that Mealey, either Will R. or O. Judd Mealey, was very active in helping the witness remember facts?

A. Not in the room.

Q. Not in the room?

A. No, there was nothing of that kind in the room at any time **[575]**

Q. Whenever a witness was wanted one of the Mealey boys went out and brought him in?

A. Well, I am sure I can't say that. I don't know whether—I think Mr. Stratford would call for someone, and I don't know—

Q. Now, when those affidavits were corrected, wasn't it Mealey who made the suggestion as to the proper corrections?

A. No; I think I heard all the testimony, and when there was something in there that I thought wasn't the way he intended to say it, his attention was called to that.

Q. The witness' attention? A. Yes.

Q. And he always accommodated himself to what you thought the fact ought to be?

A. No, I don't know about that. I don't remember that part at all. The affidavits will show all corrections that were made—the changes.

Q. Well, did you have any knowledge of the facts yourself? A. Not a bit.

Q. Did you know that none of these entrymen had paid any location fees?

A. No, I didn't know anything about that.

(Testimony of John Van Zante.)

Q. You recall, however, that they all testified that they had? A. That they had, yes, they told me.

Q. And that they paid it to Mealey?

A. That I don't remember.

Q. Who was right there at the examination?

A. I don't remember what they testified about—I remember—whatever the affidavits show is what they testified to.

Q. Who made the changes in the affidavits? In whose handwriting were they made when they were made? **[576]**

A. I think they are all in my handwriting. I could tell if I saw one of them.

Q. Look at that now. I call your attention to Government's Exhibit 4, and ask you who it was made those pen corrections?

A. That is my handwriting.

Q. You did that?

A. That is, the one on page 1.

Q. Now, what did you know about the fellow—how he went across section 18 there?

A. Must have heard him say it.

Q. What? A. Must have heard him say so.

Q. Well.

A. It was rather slow work, the stenographer taking it down on the machine, and sometimes we didn't get the answers down correctly, and then the changes were made.

Q. Well, now, I call your attention to Government's Exhibit 5 there, and ask you if you made the changes down there in the last answer on the page. If that is your handwriting? A. Yes.

(Testimony of John Van Zante.)

Q. You notice there that the fellow said that he—that is, John J. Gilliland—that he said that he paid Mealey $50 for locating him some time before he was located, and the change is sometime before he "made final proof." You had no knowledge of that fact yourself, did you?

A. No, I didn't know anything about that except he testified to it. All I knew is what he testified to.

Q. He testified he paid him before he was located?

A. Yes.

Q. And what occasioned you to have that change inserted there made before final proof? **[577]**

A. This probably was read over to him and he suggested that was such a time. That is the only way I know about it.

Q. You think he suggested that instead of you?

A. I suppose so. They were read over to him or by him.

Q. Weren't those corrections suggested by Mealey who was sitting there?

A. Not that I know of.

Q. What? A. Not that I know of.

Q. You remember that Mealey was very officious in the matter, don't you? A. He was there.

Q. Yes.

A. One of the Mealeys was there nearly all the time, and Mr. Thompson was there too about as much as the Mealeys.

Q. Now, I will call your attention to Government's Exhibit 6, the testimony or the affidavit of W. J. Lawrence. You will notice there is a whole lot of changes in that one. Just examine them there

(Testimony of John Van Zante.)

and see if you made them all.

A. That is all in my handwriting except the two signatures.

Q. Yes. Well, now, what about this—the witness is made—is asked this question: "Then as I understand you, you don't know who you sold the land to nor how much you received for it, is that correct? A. I know what I received. I got Mr. Mealey to sell it for me. I got $50." Now, there is added to that in pen "over amount of mortgage." Do you have any recollection of how that came to be put in there?

A. No, I put it in there; I know that.

Q. Now, a little further down "What was the amount and from whom did you borrow it?"—speaking of the final proof money—"A. From Mr. O. J. Mealey, he furnished the money [578] and I don't know what the amount was." Then there is added to that, "But think it was $700."

A. That is my handwriting. I don't know how—it is in there; I know that. I don't remember how it got there.

Q. Then next, further down, "When and where did you give him the mortgage? A. I don't know without it was in Roseburg." That is changed to scratch out the indefiniteness altogether, and the word "at" added and made to read, "At Roseburg."

A. Yes. That was done at the suggestion of the fellow making the affidavit.

Q. You think it was?

A. Yes, I am quite sure of that.

Q. Wasn't it done at the suggestion of Mr. Mealey?

(Testimony of John Van Zante.)

A. I don't remember that Mealey suggested anything. Now, if he suggested it it was not in my presence. It wasn't in the room where the affidavits were made.

Q. Didn't it occur to you in that examination that these parties didn't know to whom they had deeded that land at all, and that they didn't know to whom they had mortgaged the land at all, and some of them didn't know that they had mortgaged it at all?

A. If I was going through an examination of that kind now I would see things in it that I didn't at that time, and I remember Mr. Stratford saying the evening or in the morning before there was an examination—he said, "These fellows have gone through this three times," I think he said, "And they know about what I am going to ask." But to me it didn't occur that it was a farce, if it was a farce.

Q. You didn't know that they had gone through it three times, did you?

A. I didn't know they had ever been called upon by the Government before. **[579]**

Q. And they didn't appear as if they had been called upon, did they, when they came in there?

A. Well, they were quite free in their manner. They weren't disturbed.

Q. So far as you were able to ascertain, there never had been any other examination?

A. I didn't know anything about any other examination.

Q. You never heard of any in your connection with the case?

A. Not until Mr. Stratford told me.

(Testimony of John Van Zante.)

Q. Now, the question on the last page: "How much money was paid to you by Mr. Mealey for Mr. Kribs at the time you made the deed and gave it to Mr. Mealey? A. I don't know." Now, that is changed to "$50" in figures.

A. That change is made in my handwriting.

Q. That is your handwriting? You can't state any more definitely how that happened?

A. No, I can't.

Q. Now, the next question is: "How much money did you borrow on the land? A. I believe it was $600. I don't know." Changed to $700. Is that "7" in your handwriting?

A. That is all in my handwriting except the two signatures and the date of the money.

Q. Now, the very last answer when he is asked if he has got anything further to state and he states, "I have nothing further to state." Then there is an explanation made to that. That must have been made by you—

A. It is in my handwriting.

Q. —altogether, because this witness, W. J. Lawrence, probably wouldn't think of this, considering his former testimony: "Except that Mr. Mealey acted as agent only in assisting me to procure the money for final proof and in the sale of the land." **[580]**

A. That is all in my handwriting. It was there before he signed it.

Q. That was suggested by you rather than the witness, don't you think?

A. No, I don't know about that, Mr. McCourt. His attention was called to his whole affidavit; it was

(Testimony of John Van Zante.)
read over by him or read to him, and these matters came up that way.

Q. Now, here is John Thomas Parker, in Government's Exhibit 10. That change there is the last where he answers: "I had part of the money of my own, and I sold cattle and hogs to the amount of $411." And you have added in there "Which together amounted" to the amount of $411. That was a mere grammatical correction you were making there?

A. I made that. I made the change there. That is my handwriting and my signature.

Q. Well, wherever those changes were made they were made by you and you have no present recollection of them now beyond what you have stated here?

A. No.

Q. You were not familiar with the land business at that time? A. No.

Q. Not educated in it as much as people have become in recent years.

A. I just had a general knowledge of it—not particular.

Q. Your instructions from Mr. Kribs up there were to the effect that you were to—or rather, you gathered from what he said that it was the desire to have it appear that the transaction had been regular and that if there was any intervention by Mr. Kribs or the Mealey boys there that would appear on its face to be a little irregular, the intention [581] was to explain all that and make it appear regular.

A. My instructions were to attend that investigation and to bring back copies of the affidavits with

(Testimony of John Van Zante.)

me. He never intimated that he wanted them to say this or that.

Q. Did you receive your compensation direct from Mr. Kribs or through Mr. Tanner?

A. From Mr. Tanner.

Q. Who paid Miss Harkness? A. I did.

Q. You also took some affidavits there in Albany, did you not? A. No.

Q. How? A. No.

Q. At the Revere House? A. No.

Q. Do you remember Rozell—a man by the name of Rozell and a man by the name of Maynard?

A. No, never heard of them. It seems to me as if Stratford went to Brownsville from—

Q. You didn't go to Brownsville with him?

A. No.

Q. Did Mr. Stratford appear to have a pretty thorough acquaintance with Mr. Kribs at the time?

A. Well, I don't know. I never saw Mr. Stratford and Mr. Kribs together, and he didn't say anything about it that I recollect.

COURT.—Did I understand you to say that after these statements had been prepared, some of them were read to the entrymen by you, and other instruments the entrymen read themselves before signing them?

A. They were either read to the entrymen by me or read themselves.

COURT.—Do you remember those who read them, whether [582] that was done in the examining room or whether they took them outside?

A. Well, yes—it may be that some of them were

(Testimony of John Van Zante.)

taken outside. I am not sure about that. That may be, that some were taken outside.

Mr. McCOURT.—What is that?

A. It may be that some of them were taken outside. I am not sure about that.

Q. (By Mr. McCOURT.) Well, Mr. Mealey went out with them whenever they were; if they were, he went out with them?

A. That may be; I don't know about that. I think as a matter of fact—that hadn't occurred to me until just now—I think some of them—I know some of them were taken outside.

COURT.—Read outside; I mean taken out and read before they were signed. A. Yes.

COURT.—Do you remember whether any of the statements that were taken outside were corrected before signing?

A. No, I could not state as to that.

Witness excused. **[583]**

Taken in case 3320, stipulated to be used in 3319.

[Testimony of Frederick A. Kribs, for Defendants.]

FREDERICK A. KRIBS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. LIND.)

A. There were 14 claims, eight of which averaged about 171 acres, making a total of 1525.44 acres, at $5.25, is $12,208.56.

Mr. McCOURT.—How many dollars?

A. $12,208.56. Now, I gave him May 8th a check of $3,500, practically on account. I know there was

(Testimony of Frederick A. Kribs.)

some money coming on some of these claims, but there were either some school sections in that same vicinity that were fully closed for, or there were certificates out. At any rate, I gave him $3,500 on account. May 16th I gave him $5,962.60, which represented the land office fee in the proofs of May 16th. May 22, 1900, he came to me in Roseburg, and stated he was on his way to California, that he had some options on redwood, that for me to give him all the money that I could spare on this transaction, as he was going to prove up a large tract of land, and it would take money to do it. I wrote him a check for $9,000. The money, the consideration, the way I figured it out of the lands, of the 1,525 acres at $5.50 an acre, was $12,208.56. On the school lands, $6,400, making $18,608.56, of the checks that I gave him, amounting to $18,462.60. Well, I have no records or anything that I can go to to verify and find out about all of these things, and I notice there is about $140 difference in the account, which probably might have been adjudicated or adjusted in some other way, or there might have been some cash or something paid into the Land Office. I don't know. That is all I can say.

Q. Now, as a matter of fact, those lands were all paid for by you in full, during the months of April and May, 1900? **[584]**

A. Yes, sir. Practically speaking, all of the people that took these lands, with the exception of two or three, were strangers. They all scattered out. I didn't see so very much of Mr. Puter after that, from that day to this day. We took a trip into California,

all of us, for a few weeks in the redwoods. Then after that trip, from that time to this, I have only occasionally seen him, and have had but a very little or any business dealings with him. The principal deal was our 11–7 business, that we tried out here a few weeks ago.

Mr. UELAND.—I think we have to just take the testimony right along, because otherwise we would have to cover the relation between the witness and Mr. Smith. I think we will have to take it right along, and then separate it by Mr. Smith.

COURT.—Very well. That will be satisfactory. Mr. Kribs' entire testimony can go into each branch of it.

Mr. UELAND.—Yes.

Q. Mr. Kribs, I now desire to inquire of you in regard to the lands involved in the other suit. I think, in conversation with you heretofore I have referred to those lands as the Mealey claims.

A. Yes.

Q. When did you first learn about those claims?

A. Some time prior, a short time prior to the proof of O. J. Mealey, William R. Mealey, John A. Thompson, and another name—I have looked up—a man named Steingrandt. Shortly before they proved up, Mr. O. J. Mealey met me and stated that they were going to prove up, and would like to borrow money to make their final proofs, **[585]** and stated they had some money, but they could use that in case they concluded not to sell at once. I told him that I would loan him the money. And I told him beside that that "when you make your proof, instead

(Testimony of Frederick A. Kribs.)

of making a loan, I would a great deal rather buy your land than have a mortgage proposition."

Q. Well, what was done subsequently?

A. Well, I have some abstracts here, partially from the records in the Land Office, which would state.

Q. By the way, before I forget it. I want to ask you a question in the other case before I overlook it. Recurring to the other case, which you have just testified in regard to, were you present at the Land Office when the second lot of proofs were taken in May, 1900, May 16, 1900?

A. I am not sure whether I was in Roseburg or not. I have no way of swearing to that positively. Now, I might have been there, because on that date there was a thousand dollars check, I believe, given to Mr. Puter, and that I don't know—you have the checks—so I don't know whether it was paid there or in Portland. If it was paid right there in Roseburg and deposited.

Q. Whether you were there or not, who attended to your interest on that occasion?

A. I think it was Mr. Shupe.

Q. He had full charge of the matter of making the loans and taking the conveyances, did he?

A. I instructed him to do that. Now, whether he took them all or not, I cannot tell without looking up.

Q. Did you take any? A. No.

Q. Well, now, we will recur to the matter in evidence. After this transaction with Mealey, O. J. Mealey, with [586] reference to furnishing money

(Testimony of Frederick A. Kribs.)

for proving up on those claims, that you named, the two Mealeys and Thompson and Steingrandt, what was done? A. After the proof?

Q. No, after this conversation with O. J. Mealey.

Mr. McCOURT.—Just a moment. What are you looking at?

A. Come on. Look it over before I go to talking. You have got the stuff that I expected to have and refer to, and I have given it to you, so I have made a memorandum for myself.

Mr. McCOURT.—Well, this is the amounts of the checks.

A. And I have my data and dates, and some abstracts that I have.

Q. As long as it is a list of checks. You have some other memorandum there. I want to know where you got it before you testify about it.

Mr. McCOURT.—That is just a list of checks. I don't have any objection to that. We have the list of checks. I was going to put them in evidence.

A. I gave you the checks when I made these memorandums.

Mr. UELAND.—He is not testifying from the memorandum now, anyway.

Mr. McCOURT.—He was looking at it.

Mr. LIND.—It is simply to guide him as to the dates of the instrument.

Mr. McCOURT.—Well, if he has any use for these.

Mr. LIND.—No, I don't think so.

(Question read.)

Q. After that, what occurred, what did you do?

A. Well, from my memorandum, August 16,

(Testimony of Frederick A. Kribs.)

1900, they made **[587]** their proof at the Land Office, and the check for $1,642.04 was paid into the Land Office as their Land Office fees.

Q. Yes. Did you buy their claims from them at that time or subsequently?

A. I practically purchased the claims from them at that time, though I know that August 16th, I paid W. R. Mealey a balance on his claim by check $429.52. The same date there was a check for Steingrandt, which must have paid for his. Now, on the same dates were two checks of $100 each which I gave Thompson and O. J. Mealey. The only way that I can explain that is this. As I remember, they gave me some notes—they gave me some notes. Now, they have to go home and have their wives sign those deeds, and when those deeds came back again, August 27th, I gave them checks of $329.51, $329.49, and that transaction was closed.

Q. That together with the $100 made their equity?

A. Yes, sir.

Q. What did you pay for those four claims?

A. I think it was about $5.00 an acre. No, I think it was $5.25—$5.50 an acre.

COURT.—Whom were the checks made payable to, Mr. Kribs?

A. One check is W. R. Mealey, and on the Steingrandt, I think that was made to O. J. Mealey, and the other checks to O. J. Mealey and J. A. Thompson.

Q. Now, tell us all about that bargain and the transaction.

A. Well, about all there was to it they had filed on these lands, and shortly before proof, they came

(Testimony of Frederick A. Kribs.)

down to see me, and I said that I would furnish the money and just whenever their proofs were completed, they had the privilege **[588]** of giving a mortgage or they could sell out if they wanted to. And I made a bargain and gave them $5.25 for their lands, and got the title as soon as I could.

Q. Had you ever had any conversation with them or any of them in regard to these entries prior to that time?

A. No. Till a short time before proof was made I have no recollection of knowing that they had filed on any pieces of lands.

Q. You had met them before?

A. I met them by staying all night at their house when we went into the mountains going and coming.

Q. That was about the 20th of May?

A. The first trip.

Q. I mean the first of April.

A. The first of April, and then I was there again, I think it was for one night or possibly two in May, 1900, and then I was not up there again for about eight years.

Q. Prior to the purchase of these lands, had you ever talked with them about making entries?

A. No.

Q. Had they ever told you that they had or intended to take timber claims?

A. They never said anything about timber claims at all.

Q. Prior to the conversation you refer to?

A. Prior to the time that I saw them there in Roseburg, whenever that was.

(Testimony of Frederick A. Kribs.)

Q. Now, when you met them in Roseburg and bought these claims, did you buy them in good faith?

A. I did.

Q. Believing that they had full right and could lawfully sell them to you? **[589]** A. Yes.

Q. Had you any suspicion of any wrong being intended on the Government, or anybody else?

A. No.

Q. You later bought and took, I think, took mortgages in some instances, of some of the remaining of the claims involved in that suit. Now, proceed and tell us.

A. About the time that this proof was made of these four pieces that we just mentioned—two Mealeys, Thompson, Steingrandt—I had a talk with O. J. Mealey, possibly William R. Mealey was there —I am not so sure—that they were going in there and going to locate a lot of their friends in the Sweet Home country on lands. They thought that they could get money at either Brownsville or Albany; in case that they wanted to get money, would I advance it. I told them if these people took good lands that were not burned, good, virgin timber, that I would advance money; that I would take a mortgage on the lands, whenever they had anything for sale, if it was good stuff, I would be very glad to buy it, and made it good and plain.

Q. When was that conversation?

A. That was not a great while, as I recollect, after this first transaction. I think it was about that time.

Q. Well, what occurred later?

(Testimony of Frederick A. Kribs.)

A. Well, there were nine people, I find from the abstracts and the Land Office book by the name of Billings, S. Pickens, Andrew Wiley, Ericksen, Joe Steingrandt, Joseph Mickalson, John T. Barker, Charles Wiley, George Pickens. There was about 1,440 acres of land. They proved up August 27th, and there was a check paid **[590]** into the Land Office for the nine claims, amounting to $3,696.46.

Q. What other conversation did you have with reference to these claims, and with whom, and what was done?

A. Well, on this list of claims of 1,440 acres, I talked with them about this land after their proofs were made, or about that time—1,440 acres—said it was not as good lands as the other, and I told them that I would give them $4.75 an acre for that.

Q. Well, then what?

A. Well, about the time of proof, or shortly thereafter, at the time they proved up, I always took a note or mortgage or both, as my own protection, and I know the lands. Shortly after that, they all deeded their lands. That is, I have some abstracts here. Here is the receipt of August 27th.

Mr. McCOURT.—Now, what is that you are referring to—that memorandum you made?

A. This is from the County Recorder of Albany and of an abstract of each piece. The abstract of the record, and also some data as to when they proved up.

Mr. McCOURT.—When was that made?

A. In the last few days—last few weeks.

Mr. McCOURT.—This abstract was?

(Testimony of Frederick A. Kribs.)

A. Yes. Part of it is from Land Office records, and part from Albany.

Mr. McCOURT.—I would like to have the witness testify from his recollection.

COURT.—I suppose that is an abstract of what is already in evidence?

Mr. McCOURT.—Yes. **[591]**

COURT.—Well, if he makes mistakes in dates it can be corrected by the record.

Mr. McCOURT.—I understand. But I want to see whether his recollection is good.

A. I was told I could use this, or I would try to charge my memory. And that is why I have not done it.

Mr. McCOURT.—I want to see how far his memory is charged with these past transactions, rather than from the record aiding his memory to the record.

COURT.—Let him state what he remembers about it.

A. I think some of them sold the same day, and some very shortly thereafter—sold the lands.

Q. Now, you said a moment ago you took a mortgage for your own protection. What did you mean by that?

A. In case they would go home and wanted to change their mind and didn't want to sell, and didn't sell, I would have something to show for the money that I had advanced.

Q. To the Land Office? A. Yes, sir.

Q. Well, how many claims did you buy in the aggregate through the Mealeys?

(Testimony of Frederick A. Kribs.)

A. Well, in this transaction there is, four and nine is thirteen—I think it is 24 claims involved, 24 claims in the proofs of August 16th, August 27th I think there were eleven, and October, making 24 claims in those three lots.

Q. Were you present at the Land Office when the proofs were made in these cases?

A. I think that I was present in August.

Q. Were you present at the subsequent times?

A. I was not present in October.

Q. Had you anything to do with the proofs?

A. No. **[592]**

Q. When did you pay for these claims—to whom and how? Who brought you the deeds?

A. The deeds were either brought to me or sent to me, either by O. J. Mealey, W. R. Mealey, or possibly Thompson. That I cannot tell. It is one or the other of them. The three of them were working and locating and such a price as I made, whenever these lands were ready for sale, I says, "I will pay so much for them" whenever the deeds were presented.

Q. And you paid for them. State how you paid for those 24 claims that you refer to.

A. On the first nine claims, August 27th, I paid $1,000 to Mealey brothers and Thompson, in three checks $333⅓, one check $333.34, the other two $333.33, making one thousand dollars. On September 16th I gave Thompson a check for $542.33, W. R. Mealey, $542.53, O. J. Mealey, $542.53 and that left a balance on these lands of $516.15 of that payment paid to date. Now, the third claims, there was a check to the Land Office of $4155.68. That must

(Testimony of Frederick A. Kribs.)

have been looked after possibly by Mr. Shupe. I was not there at that time. October 17th there was a check of $410.61 which was for the Watkins claim. November 1st, I paid O. J. Mealey $300. December 13th, I gave him $638.32; December 13th, J. A. Thompson, $940.82; December 13th, W. R. Mealey, $940.82. Now, that left a balance on these claims of a little over $1500. There was a little over $500 on the lot of nine claims, on October 17, 1902. The only way I can get at it was from some check stubs which stated—stubs of the checks I gave Mr. McCourt when patents were issued on Rock Creek lands. I gave **[593]** them one check of $772.04, $632.54, $632.54, making a total of $2037.12. For that account there is about a difference of $6.00 somewhere, which I cannot account for. Now, in one of these lists of lands, there was a piece of land taken by a man named Fred Wodtli. I found the stub of that check, dated December 13, 1900, for $850 for the Wodtli claim. Yet in looking up my abstract, I find that Watkins October made a deed, I think, to one of the Mealeys and the Mealey deeded it to me.

Q. Did you know anything about these entries or the entrymen?

A. The entrymen, as I recollect—*Q.* except the Mealeys and Mr. Thompson—

A. They were all strangers to me.

Q. Did you have any conversation with them at all or dealings with them? A. I did not.

Q. Did you have any conversation with Wodtli?

A. No, I did not.

Q. You made a check to him direct, did you?

(Testimony of Frederick A. Kribs.)

A. No, I think it went to one of the Mealey boys or Thompson. I am not sure. I think they got it. I made some inquiries—I gave $850 for the land, and my recollection is Wodtli received $750 or something like that. It might have been $800. I know I gave $850 for it.

Q. At the time you bought these claims, did you pay the current market price? A. I did.

Q. Or higher?

A. I paid the market price right through that lands were selling for in that vicinity. **[594]**

Q. Did you buy them in good faith?

A. I did.

Q. Did you believe that these parties who sold to you—Thompson and the Mealeys you bought from—some of the claims were bought from the Thompsons and the Mealeys, were they?

A. Practically the deeds and the transactions with these people were with the Mealeys. I was not up in that country, and did not know these people, and I looked to Mealeys and Thompson—they were given a good reputation. I stated I would pay so much per acre, and my impression from them was this, that they were going practically themselves for a locating fee, or make a commission or something out of it—make what they had a mind to.

Q. Now, in buying those claims and taking those conveyances did you believe that the parties who made the sales and made the conveyances had the right to do so lawfully and rightfully?

A. Yes.

Q. Was there any doubt in your mind on that

(Testimony of Frederick A. Kribs.)

question?

A. I asked two, all three of them one time, I says: "How are you locating these people, and who are they"? "They are our neighbors; they have lived here for years; some of them born and raised in these mountains. We are locating them." I says: "Are you hiring them to go on there, anything of that kind"? They says, "Nothing of that kind." They says they can go on there, and after they get their land, they can do with it just as they please. They put it up to me as a straight, legitimate proposition.

Q. Well, did you have any reason to doubt their statement?

A. I did not. There was no holler through the country **[595]** about land frauds or mix-ups or anything of the kind. I was up there in April, or May. At that time I did not even talk to them about any of these lands or anybody else. And I never went up there again for about eight years and a half after. I was very busy off in Coos and Douglas and California, sometimes in Idaho. And I took their word for what they said.

Q. How did you come to take these conveyances to yourself in this instance? They eventually became the property of C. A. Smith, did they not?

A. Yes.

Q. And Swanson?

A. I didn't think anything particular about that, because either they might have been deeded to Willd or any other name he suggested, or to myself, and at the same time, I know I had one idea of buying up quite a bit. I was a stranger here. They would find

(Testimony of Frederick A. Kribs.)

I was practically located and staying here, and it was my name, they would hunt me up, perhaps there might be propositions presented all over the country or territories, and the people would come right directly to me. I would cut out just as many third and fourth men as possible.

Q. Intermediaries? A. Yes.

Q. The money used for paying for these conveyances, was that your own or was it Smith's?

A. That was practically all Smith's land—Smith's money.

Q. In regard to these lands, had you submitted these purchases to Smith before they were made, or did you not submit them until after they were made?

A. I practically told him about them after they were made, as I recollect. But I had talked about that country, certain streams in that country, and the slopeage of **[596]** that country would be a good territory to group up a tract of land without presenting any particular quarter sections of land.

Q. What were you paid for purchasing these lands for Mr. C. A. Smith?

A. Well, we had quite *a* argument in settling, about compensation. That was some time in December, 1900, I guess, we made our first settlement, something like about twenty-seven and a half cents an acre or something like that.

Q. Were you buying for other people at the same time? A. Yes.

Q. Who?

A. I grouped up quite a lot of land for Governor Pillsbury, some for John and Charles Pillsbury,

(Testimony of Frederick A. Kribs.)

picked up quite good interests for myself, and then I had interests for Gale, Snyder and had other names, I would have to look up to fresh up my mind.

Q. Now, were you paid the like amount of commission on the lands in the Puter suit?

A. I got for everything prior to December, 1900, I think it was all $.27½ an acre.

Q. After that you received?

A. Well, about a year afterward, there was not so much scripping and so much business, and there was a contract about one year after that, December, 1901, at $.50 an acre.

Q. Now, did you have any other relation with C. A. Smith than to look up lands, submit them to him and buy them at a compensation of $.27½ an acre?

A. No, I could submit lands to whomever I pleased, and whenever I pleased, and that is about what I did, what **[597]** I have been doing ever since I have been here. I did a great deal of business for him, for the reason that the territories that he selected covered a large expanse of country. The country suited him, and I would show all this up to him, and he would take it. Of course I would take all the money I could get to make investments.

Q. Now, if he had been dissatisfied with these purchases from the Mealeys, or through the Mealeys, for instance, what would have been the result? Would you have kept the lands?

Mr. McCOURT.—Objected to as immaterial, calling for stating a hypothetical case.

Mr. LIND.—It may be indifferently suggestive of the idea, but the idea that I wish to bring out was

(Testimony of Frederick A. Kribs.)

whether or not he would have kept the lands himself if his transaction had not been approved, as bearing —I want to place before the Court fully the actual relations between C. A. Smith and Mr. Kribs. And it is to that end that I ask that question.

COURT.—You can show whether he had authority from Smith to buy this, or whether he bought it on chances of Smith taking it afterwards?

A. Now, had you any instructions from Smith to buy these Mealey claims? A. No.

Q. Did you act entirely on your own judgment in buying them? A. I did.

Mr. McCOURT.—Well, now, if the Court please, I move to strike it out because it is leading. The witness already said he talked to Smith before he bought those claims, about that territory up there, and they concluded that it would be advisable, in the interests of Smith, to **[598]** group a lot of claims up there, and that was the authority he bought them on. Now, they want to show he bought them on his own hook and submitted them later.

Mr. LIND.—No, I don't say that. I don't pretend that they were bought on his own hook except in this way.

Mr. McCOURT.—Well, that was not the case that arose at all. He might have refused to give them to Smith and Smith might have refused to take them, but he did not.

COURT.—I think he may testify as to the circumstances surrounding this transaction. His opinion is probably not binding on the Court.

Q. Now, during this period, what was the status

(Testimony of Frederick A. Kribs.)

of the account, if you know between you and C. A. Smith? A. How?

Q. Yes, whether he was in your debt, or you in his debt, or how?

A. Well, he was largely in my debt. He owed me quite a little money on former transactions—land matters—before I come here. And I did a great deal of business for him. I accounted for everything I received from him. Consequently by going and demanding a settlement by most any old time, he would be owing me quite a little money.

Q. Now, when he sent you remittances, were they sent for any particular tract, or purchased as a rule, or were they sent simply because you called for money for investment?

A. Well, generally it was because I called for money for investment, and I would probably give him some idea. If I was going way off into a brand new territory or something, he knew nothing about, why I should feel that I should tell him about it; but it would be for lands **[599]** that I thought he should acquire to group up with what perhaps he already owned.

Q. Now, the moneys sent to you here on the coast, were they charged to you in the accounts of C. A. Smith? Were you charged as a debtor by him for moneys that were sent to you? A. Yes.

Q. And that is the way your account has always stood?

A. Yes. I used to just simply—had at one time a Smith account—would give him credit for whatever he sent to me, and charge him for whatever

(Testimony of Frederick A. Kribs.)

lands I purchased, or any other expenses that should go to that account.

Q. Now, did he always take lands that you purchased that you may have intended to turn over to him, during this period of 1901 and 1902?

Mr. McCOURT.—Objected to as immaterial.

A. Yes. I on my own responsibility selected with scrip between 2,000 and 3,000 acres. He saw the location, and he asked me why I took it. I told him it was very heavy, and it was very nice. He says: "I haven't anything in that part of the territory, and you should have submitted it to me." I says: "All right." I went out and fixed my account over, about two hours afterwards, and come back and I says: "How does this statement suit you?" He says: "Where is the land?" I says: "Other people have got it." I says: "I am going to keep a quarter of it myself, and other people will take it." Well, he asked me some more questions about it, and he says: "You have been in a considerable rush about this." "Well," I says, "any other territories I will see that you know all about it before I go into it." He didn't [600] get it.

Q. How?

A. He never got it, and he has not got it yet.

Q. Well, who has got those lands?

A. It is Pillsbury and Kribs have got it.

Q. Well, the point that I want to get at, when did this occur?

Mr. McCOURT.—Now, just a moment. I move to strike all that out as immaterial.

A. That was some time in the summer of 1900.

(Testimony of Frederick A. Kribs.)

I think it was July or August, 1900.

Mr. LIND.—I wish to be frank with the Court, that I wish to show by this witness the facts as they actually exist, whether the relation as it existed in fact, and as it will be developed here, and by evidence taken in Minneapolis, whether it constitutes an agency. I don't know—that is a question of law for the Court to determine in the final analysis. And it is with the view of placing the actual relations between the parties, in evidence, that I have asked these questions.

COURT.—Very well. You may proceed with the examination upon that theory. I understood Mr. Kribs to testify that Smith visited this section of the country before he made any contract for the purchase of this land, and that he acted on Smith's direction as to this particular locality.

Mr. LIND.—That is true, yes.

COURT.—You may develop the other side of that suggestion.

Mr. LIND.—Yes. You may take the witness.

[601]

Cross-examination.

(Questions by Mr. McCOURT.)

Now, then, in these Mealey claims up there, you say that you did not know anything about those till about the time Mealey went to prove up?

A. It wasn't a great while before.

Q. And that after he did prove up, or the Mealey boys proved up, and one fellow by the name of Antone L. Steingrandt, that Mealey proposed to you that he would get a number of his neighbors to locate

(Testimony of Frederick A. Kribs.)
on lands, and try to buy them from them after they located.

A. Well, I don't know whether he had reference to these particular lands, or some other lands that he intended to locate, or not, because most of the lands involved in these suits were filed on before he came down to ask me whether I would furnish him money in those first four cases.

Q. Well, you didn't say anything about that this morning, did you? A. What say?

Q. You stated this morning you did not—

A. I don't know. I spoke in a general way that he wanted money for some of his friends.

Q. Yes, he was going to get them to locate afterwards. Well now, he never located those fellows until after you and Smith had been up there to look at the land, did he?

A. Prior to that time such lands as he had he turned over, I assumed, to Puter and McKinley, and they did the locating.

Q. You knew that he was one of the men who located the land, or picked it out, for McKinley and Puter?

A. That is what I understood. **[602]**

Q. You understood that, when you went up there first?

A. I heard it, I think, at the time I was up there, or shortly after.

Q. Mealey was there, and did he go over the ground with you, with McKinley?

A. Yes. William Mealey, I think was with us, and I am not sure about Judd.

(Testimony of Frederick A. Kribs.)

Q. And the next time you went out, when you and Smith went out to look at the lands?

A. I think they both were along.

Q. Both the Mealeys were along?

A. I think so.

Q. And you and Smith expressed yourselves as kind of desirous of acquiring that timber?

A. There wasn't much of anything said. I know the impression I had, that probably Puter and McKinley had selected nearly everything that was worth anything. The odd sections belonged to the Wagon Road Company. I didn't have much of any reason to believe there would be much of anything left in there. I don't think the subject came up at all.

Q. At any rate, all the money that was furnished was furnished by you?

A. Yes; excepting I didn't furnish the money for Wodtli, I think.

Q. No, you didn't furnish the money for Wodtli. He furnished his own money?

A. There might be some more of them, but I cannot tell.

Q. Now, the checks you were speaking of this morning, I will ask you if a mutilated check which I hand you, is one of the checks you mentioned there? I think *per-* **[603]**

A. I think it was of August 16, $1642. This is $1642, and here is some other parts. I don't know how it got torn. I tried to put it together.

Q. Yes. Now, you got your deeds immediately, or practically immediately after you made proof?

A. I think I took two deeds. The fact of the case

(Testimony of Frederick A. Kribs.)

in those four claims I really bargained for them the same day they proved up. I took two deeds that day, and two, two or three days later.

Mr. McCOURT.—I offer that check in evidence.

Marked "Government's Exhibit 75."

Q. And you took some mortgages there too, didn't you, the same as you did in the Puter case?

A. I think I took two mortgages and two notes. I cannot tell that now. But I know two had to go to Sweet Home to get their wives to join the deed. And then, if I did, why those papers were no doubt returned to the people who made them.

Q. Did you talk to these entrymen?

A. I had my talk principally, I think, it is with Judd Mealey, but perhaps in these particular cases—I do not remember Antonio Steingrandt—but I talked with Mr. Mealey, the two Mealey boys, and Thompson, I am sure, because I felt I had some acquaintance with them; but this other man I don't recollect of.

Q. You were down there when those fellows were locating, weren't you?

A. I do not recollect when they filed on the land. I do not recollect of seeing them.

Q. You remember helping put old man Billings on the proper **[604]** piece of land? You got him on the wrong piece.

A. No, sir, nothing like that happened.

Q. Didn't do it? A. No, sir.

Q. Do you remember working the rush act on old man Tuthill down there, and getting a deed out of him right quick?

(Testimony of Frederick A. Kribs.)

A. No, I don't. That is imagination.

Q. He just imagines that?

A. Someone does.

Q. What? A. Somebody imagines that.

Q. He stated it here on the stand. Didn't you hear him?

A. I don't think I was here when he testified.

Q. Now, what day was it you paid the Mealey brothers and Thompson for their lands?

A. I paid August 16th, William R. Mealey a check for the balance of his land.

Q. When had you paid him any before that?

A. It is the money I let him have, that I was going to take a mortgage for, the money paid into the Land Office.

Q. Oh, I see. And that was the very day he made proof, wasn't it?

A. Yes. And I paid for the Steingrandt piece, and one of the Mealeys, or Mealey brothers—I don't know—$389.44, August 16th.

Q. Yes, the same day.

A. Now then, August 16th, Mealey wanted some money, and Thompson, and I gave them $100 each.

Q. What was that for?

A. They had agreed, as I recollect, to sell their lands, and they wanted some money. I suppose for personal **[605]** expenses, or something. I didn't ask them what they wanted it for.

Q. Well, you had already paid them money for their land that same day?

A. No—that is, William R. Mealey and Steingrandt. Now then, this is to O. J. Mealey and J. A.

(Testimony of Frederick A. Kribs.)

Thompson. August 27th, when their deeds came, each one of them got a check for about 329 dollars and odd cents, which closed that account.

Q. Well, they didn't give any mortgage then?

A. I may not have taken a mortgage; I may have taken notes from those two; because they didn't close up at the time.

Mr. McCOURT.—I offer in evidence the checks just described. (August 16, $389.44, $429.52, $100, $100.)

Marked "Government's Exhibit 76."

Q. How long was it after they made proof that day, that you finally agreed to buy the land from them? A. That I cannot state.

Q. You are sure it was after proof?

A. Yes.

Q. What makes you think it was not in the morning, about half-past eight, before they went to make proof?

A. Of course, naturally, they would make their proof, and if their proof was all right, the money acceptable to the Land Office, I would have the payment made to the Land Office to complete their proof, and then it would be time enough to take a deed after that, or a mortgage.

Q. You still had in mind the deed proposition there. You thought it would be necessary to take a mortgage out of Mealey's, so you would be sure to get a deed?

A. Not necessarily. If he wanted to go and sell it to **[606]** somebody else, I would have something to show for the money put into the Land Office.

(Testimony of Frederick A. Kribs.)

Q. Well now, what payments did you make August 27th?

A. August 27th I gave a check into the Land Office for $3696.46.

Q. Now, that is in evidence here?

A. I think so.

Q. What else did you pay that day?

A. August 27th, I paid $1,000 to the two Mealeys and Thompson.

Q. In separate checks? A. Yes.

Q. What did that represent?

A. I do not know just what they did with that particular money.

Q. Don't you know why you paid it to them?

A. Yes, I made a bargain, I know,—I am sure—for some of these pieces.

Q. Well, how much later in the day did you draw those checks than the check that you paid the Land Office?

A. Oh, it might have been a few hours; something like that; I don't know.

Q. Well, did you really draw any check? Wasn't that one of those memorandum checks you had authorized the bank to draw, about a week before, for you?

A. I cannot tell. I gave you what I have got, so that you probably can tell. You have got that there. I am pretty sure it was a check that I drew myself. I cannot say. I guess you will find that it is a check that I drew myself—the three of them.

Q. Yes, that is a check for the three of them that you drew? A. Yes. **[607]**

(Testimony of Frederick A. Kribs.)

Q. But I am talking about the Land Office check, for the payments for proofs.

A. Let's see. I don't know that I have any data here. I cannot tell.

Q. Well, the record will show.

A. I gave you what I had.

Q. Well now, what else did you draw that day?

A. I don't think I drew any checks on August 27th.

Q. Well, you drew those checks?

A. I drew the three checks.

Q. To Judd Mealey and J. A. Thompson that same day? A. I told you about those.

Mr. McCOURT.—I offer that bunch of checks in evidence. (August 27, $333.33, $333.33, $333.34, $329.49, $329.51.)

Marked "Government's Exhibit 77."

Q. Now, what is the next check you gave in connection with the Mealeys?

A. September 16th I gave a check to J. A. Thompson; also one to W. R. Mealey, also one to O. J. Mealey, amounting to about 542 dollars and some cents—$542.33, $542.53, $542.53.

Marked "Government's Exhibit 78."

Q. Didn't you make any other payment that day?

A. I can't find that I did.

Q. What were they for?

A. That was, I had it here, these sums of money, total amount paid on the nine claims, $6323.85. They come to $6840, or there was $516.15 due them on the nine claims on September 16th.

Q. That was nine claims that were proved up that

(Testimony of Frederick A. Kribs.)

day? **[608]**

A. For the nine that proved up at that time.

Q. Yes, and you made a Land Office payment that day, didn't you?

A. This $3696.46 is included in this $6323.85.

Q. What $6323.85?

A. I am sum totalling all these checks that I have given as to these nine entries here.

Q. Well, how did it happen that you were dividing up these moneys equally among O. J. Mealey, J. A. Thompson and William R. Mealey?

A. I made a price, as near as I can get at it,—I had no records to get it exactly; I consulted it recently; and they stated, the Mealeys and Thompson, that this list of lands was $4.75 per acre. Now, after I had *furnished*, these people made up their mind to sell, I fixed the price at $4.75 per acre. They could go and buy these lands. And as I thought at the time, in 1900, they were protecting themselves for a locating fee, or they were buying for less than the purchase price that I made. And whenever they would come and want any money—at that time they seemed to be equal partners,—if they all happened to be together, and they wanted a certain sum of money, or something like that, why, they generally all asked for the same amount, or something like that; that they would need in their locating business $1,000, or $1200—to divide it up in three equal parts; something like that. It was at their request.

Q. That was based upon the amount of land you were getting, whatever they were paid?

A. Well, not necessarily. They might ask for

(Testimony of Frederick A. Kribs.)

some given sum of money, they might want to use for a land transaction, or something like that. [609]

Q. Now, October 9th is the next one?

A. Yes.

Q. How much was that?

A. We paid the Land Office $4155.68, that, as I recollect, was a memorandum check.

Q. What else did you pay that day?

A. Well, I have October 17th, paying a check, a memorandum check, I think it was, $410.61.

Q. And what else?

A. November 1st to O. J. Mealey.

Q. How about October 17th? Haven't you got some more there? Oh, no, that is another year. November 1st, what?

A. November 1st I paid O. J. Mealey $300. December 13th, O. J. Mealey, $638.32; December 13th, J. A. Thompson, $940.82; December 13th, W. R. Mealey, $940.82.

Q. What were they for?

A. In this list of lands were 1780.23 acres at $5.00 per acre, was 8901.15. I paid them $7386.25, which includes the two memorandum checks, I think it is: that is, the two checks into the United States Land Office at Roseburg, on these two claims, would make about $1514.90, that would be due on this transaction. On the first lot was $516.15, or making a total balance of $2031.05. Now, October 17, 1902, about two years after, I paid J. A. Thompson this amount on these patents that were issued. Also I see I paid him $772.04. I paid O. J. Mealey $632.54, W. R. Mealey $632.54, making $2037.12, or practically over paying

(Testimony of Frederick A. Kribs.)

them about $6.07 on both transactions; that is, of August and of October, 1900; and the other check, as near as I can explain it, of December 13, 1900, of $850, was for the **[610]** Fred Wodtli claim.

Q. That last check you refer to is the one I hand you here now? A. I think that is it, yes.

Mr. UELAND.—Mr. District Attorney, in the paper which I handed you yesterday if you show them to Mr. Kribs. I think you will find a memorandum of taxes, figured in there, which probably accounts for the $6.00 he speaks about.

Mr. McCOURT.—I don't know.

Mr. UELAND—It is not very serious; but I am sure I saw it.

Mr. McCOURT.—This Wodtli transaction is not involved in the case, but I might let it go in.

Mr. LIND.—Yes.

Mr. McCOURT.—I introduce the check of December 13, 1901, in explanation of testimony regarding the Wodtli claim.

Marked "Government's Exihibit 79."

Q. Now, did you explain the checks to William R. and O. J. Mealey for $300?

A. All I can tell now is a question of memory. I have nothing that I can find. Simply it was $300 on account.

Q. Does it relate to this transaction?

A. It does, to the best I can get at it.

Mr. McCOURT.—I offer it in evidence. Marked "Government's Exhibit 80."

Q. Your check of July 15, 1901, $250 to Thompson.

(Testimony of Frederick A. Kribs.)

A. July 15, 1901. I don't have that here. I don't see that.

Q. Look at the check.

A. I don't think that this check had anything to do with this transaction. I don't find this $250 check here.

Mr. McCOURT.—I want the record to show in evidence [611] checks of December 13, 1900, mentioned by the witness. It may be marked as one exhibit ($940.82, $940.82, $638.32).

Marked "Government's Exhibit 81."

Q. How about the check for October 19, 1901? Does that belong in this case?

A. October 19, 1901. No, that is not in this case.

Mr. McCOURT.—I offer in evidence checks of October 17, 1902, to J. A. Thompson, $772.04, William R. Mealey, $632.54; O. J. Mealey, $632.54.

Marked "Government's Exhibit 82."

Q. Now, what kind of arrangement did you have, Mr. Kribs, by which it was held back till after patent some $2,000?

A. It was a large list of land, and I bought at times a piece of land not patented; and I always make it a rule to hold back money until the patent is issued, in most cases. Even a small technical error, if there isn't anything coming to them, they don't care whether they fix it up or not. If there is something coming to them, they will get out and get busy. [612]

Q. Now, isn't this the proposition instead of the story you have been telling us; that the Mealey boys —that the Mealey boys and Thompson took up those

(Testimony of Frederick A. Kribs.)

three claims with the others with an agreement with you to give them $5.25 an acre for them when they proved up? A. No.

Q. And with the further understanding that all the other people they could locate and secure the lands for, that you were to pay them $4.75 an acre for? A. No.

Q. It wasn't? A. No.

Q. And that this story that you have got fixed up now is one that you fixed up since there became a question as to these lands?

A. It is not a fixed-up story.

Q. No, it isn't a fixed-up story. A. No.

Q. And that the Mealey boys under that arrangement were to get the claims at whatever price they could, and you were to pay them—

A. Whenever anything was for sale, that I would pay a certain price for the lands; and I figured that they would either get a commission out of it or else buy the land and make what they could.

Q. And you knew there was not a single one of those fellows that had made an entry there at the time you and Smith was there—there wasn't any unperfected entries in that country when you fellows were there? A. In May, you mean?

Q. Yes.

A. No, I think they filed afterward.

Q. And they come up in batches; brought down to Roseburg [613] there by the Mealey boys—you know that—on the same date to file?

A. I don't know as I was there at different times when they were filing or not.

(Testimony of Frederick A. Kribs.)

Q. You knew they all filed at the same time—or all proved up at the same time?

A. I knew they were proving up about the same time.

Q. And that they were deeding just as quick as they could get their signatures on paper after they proved up? A. Nothing—

Q. You knew that? A. Yes.

Q. Never called that—that didn't arouse your suspicion at all?

A. Nothing strange about it at all.

Q. Did you ask those fellows if Mealey had hired them?

A. No. I didn't see but a few—never talked to them.

Q. Didn't want to see them?

A. Had no business with them.

Q. No. You knew the Mealeys were taking care of them—bringing them down there?

A. That I had no proof of, whether they were bringing them down.

Q. You know they came down when a lot of fellows came to file?

A. I knew the Mealey brothers and Thompson located them.

Q. And you knew that they came with them every time they filed—or every time they came to Roseburg? A. Yes.

Q. Now, is that the regular course of business for a locator to be so solicitous of his—the party he locates as to go around with them in bunches to take

(Testimony of Frederick A. Kribs.)

care of them?

A. It would be all right in this case where they all had [614] to borrow money and someone had to look after their interest. If they didn't come they would have to send somebody else.

Q. Didn't the very fact that the fellows didn't have a cent of money, not even to pay their railroad fare, indicate to your mind something wrong with the transaction?

A. Well, I didn't know they were as destitute as that.

Q. You didn't? A. No.

Q. You knew these people had agreed to pay all the expenses, didn't you?

A. They never said anything to me about paying expenses. What they wanted was the money to pay the entrance fee in the Land Office when they proved up.

Q. And you were to pay for making proof—the publishing notices?

A. Well, I don't recall. I paid whatever the Land Office called for—whether Land Office fees or notices for the paper, I don't know; I don't recollect.

Q. What were you paying that for?

A. For the Government fee at the Land Office.

Q. What was your purpose in making payment?

A. Paying for the land.

Q. Yes. A. So they could prove up.

Q. Well, what was your purpose though? What was the object that you had to attain in the matter?

A. Whenever they would get title I would try

(Testimony of Frederick A. Kribs.)
and get the land.

Q. Now, how did you try to get that land? How were you getting that land there?

A. I had my dealings with the Mealey brothers and Thompson.

Q. You had an understanding with the Mealey brothers they should get the land for you? **[615]**

A. Well, whenever—that I would furnish the money. I had made no bargain with them.

Q. No, that was the understanding you had with the Mealeys—they were to get the land for you—before they took the fellows down to make proof, you had that understanding?

A. I told them I would furnish the money—the entrance money.

Q. Yes.

A. And that I would take a note and mortgage as my security; that whenever it was proved up, that I would buy it; would buy it just as soon as it was proved up.

Q. And you asked them to look after it and so they got it for you just as quick as they could after it was proved up?

A. They probably could buy it at a less price, but I understood they made a commission on it and would be right there to look after their own interest.

Q. And you had Mr. Shupe down there at Roseburg employed to draw deeds, and whenever Mealey brought in a man, to make a deed for it?

A. He was my attorney.

Q. Was he? A. Yes.

(Testimony of Frederick A. Kribs.)

Q. You gave him instructions whenever the Mealeys brought a man in there, to make a deed for him or any other old instrument that was necessary?

A. I don't recollect giving him any general instructions like that at all.

Q. You did know that you got most of your deeds, or half of them at least, on the day proof was made?

A. Well, they might be half; I don't know. I haven't looked that up. I didn't consider it was any difference whether I bought the same day they proved up or a hundred **[616]** days afterward if they weren't hired to go on that land.

Q. Yes, and if you didn't hire them yourself there was no state of facts that could make you understand or believe or suspect that anybody else hired them, was there?

A. The question wasn't in my mind to look it up to find out whether anybody was hiring them.

Q. You didn't want to know that; didn't care about it so long as you didn't actually do it yourself?

A. You don't understand one thing. In passing through on the train from Roseburg to Portland at Albany I should think that would be about 100 miles from the land. That would be about the nearest I would be to the property. I was at Roseburg then, on the coast and California, looking after large crews of men examining lands. I wasn't making a specialty—laying awake or thinking a terrible lot about a handful of claims up in Linn County. Had no occasion to go up there or look into it.

(Testimony of Frederick A. Kribs.)

Q. You had been there and there was nobody located there and pretty soon along comes the very fellow that had piloted you through the timber up there offering you a lot of claims newly and freshly located on— A. Well, what of it?

Q. And that didn't arouse any notion in your mind that he might have had some prior arrangement with these parties he located on the land?

A. I looked up the Mealey boys and Thompson in several places. They were given fine and honest reputations.

Q. Where did you look them up?

A. At Albany; at Brownsville; I asked parties in Lebanon about them. They all said they were responsible people—people of some means and men of their word. Further than that I was never up in that country until about eight and a half years after nearly all those transactions. **[617]**

Q. Yes, I know you didn't go back there any more. You relied upon Mealey for that absolutely.

A. I had confidence in whatever they might do.

Q. If they told you there was so much timber on a claim you believed it because you had been there and knew generally it was about so much?

A. I had got ideas from the examination I made.

Q. The claims secured were in good position with reference to other claims you had?

A. They laid first rate in that connection.

Q. And just as though you had picked them out yourself to own along with the balance of your claims?

(Testimony of Frederick A. Kribs.)

A. Yes, and then I took as a precautionary measure—occasionally I sent a man from time to time just simply to go out and check up our estimates—some cruiser.

Q. How many cruisers did you have?

A. I had altogether that summer in round numbers, I should think, 15 or 16.

Q. Who all were they?

A. Well, there was a Mr. Davis, a Mr. Norster, Charles and John Thom, McMullen, a fellow named McVicker—some work from John Givens. I would have to look it up to catch all of them.

Q. How long did they work for you?

A. Some of them worked all through 1900, 1901, and 1902 and one of them is working yet.

Q. How did they work—on salary?

A. Principally.

Q. They were in the locating business too, weren't they? A. Not my men.

Q. How about Givens and McMullen?

A. They may—in one location. I think Givens and McMullen **[618]** and one other fellow made some locations, but they were merely cruising by the day.

Q. And this man Thom, didn't he do some locating too?

A. Not after he hired out to work for me and not until after he had quit working for me.

Q. What this Givens and McMullen located you got too? A. No, not all of them.

Q. You got most of them?

(Testimony of Frederick A. Kribs.)

A. I got some of them.

Q. Those you turned over to the Pillsburys?

A. Yes, well, the Pillsbury Lumber Company—to them.

Q. Did they locate those people on their own hook, or on yours? A. What?

Q. Did they locate these people on their own responsibility or on your responsibility?

A. On their own responsibility.

Q. You had nothing to do with that?

A. No, sir.

Q. But you got the land?

A. I got part of the lands they located and some I did not get.

Q. Do you remember what proportion of the amount of money the Mealeys were to have there that you retained? A. In what money?

Q. Of the money that they were to get as the profits of this transaction of locating the people up there?

A. I didn't know at that time how much they were making.

Q. Wasn't it actually understood between you that you were holding back one-third of what would approximately be their profit in the transaction?

A. I thought you asked how much money they had made—about **[619]** how much they made the quarter. I don't know. I think it was different amounts in different deals. I don't know what it would be in this without figuring it up.

Q. Didn't you understand as an average that you

(Testimony of Frederick A. Kribs.)

were holding a third of what would be their profit in the transaction?

A. Well, I don't know that.

Q. That is, this one transaction here. You had several transactions with them?

A. Yes, I did.

Q. They located lands in the Oregon City district that you got? A. Yes, sir.

Q. Both homestead and timber entries?

A. I don't know so much about homesteads.

Q. Those were matters that went to patent earlier than these— A. Yes.

Q. —and not involved in this case. You did this —generally on your transactions wasn't it a fact that in your dealings with the Mealeys that you understood with them you were to retain one-third of the money until the patents issued—one-third of the profits?

A. Well now, the transaction of October 17th amounts to $8900; about two thousand was held back, and that would be—it probably—about a little better than two-ninths or probably twenty per cent—something like that.

Q. How long was that held for?

A. What say?

Q. How long was that held for?

A. They received their pay October 17, 1902—

Q. Well now—

A. That would be about two years—something like that.

Q. Well, you had more. How much was held

(Testimony of Frederick A. Kribs.)

back on the other **[620]** claims now?

A. On the first lot I think it was five—let's see—$516 was held back and that deal amounted to about $6800.

Q. Well, how long was that held back?

A. Well, I think that $515—I think that $515 or $516 was December 13, 1900. There was fifteen hundred and some odd dollars due and this $515 on the first lot was due in September. Now, the next three payments and October 17th practically balanced that, so it would be from December 13th to October in one case and the other case from September 16, 1900, to October 1902.

Q. Yes, but you only paid $2000, October 17, 1902, didn't you?

A. October 17, 1902, I paid—

Q. Three checks?

A. Three checks, making $2037.12.

Q. Well, that is all you had held back, wasn't it?

A. That would be all on the—

Q. On those 17 claims or 18, whatever they are.

A. Yes, on the two lists that would be the 20 claims.

Q. 20 claims? A. Yes.

Q. Well, that would be about $100 a claim you held back?

A. Somewhere about that. There was no regular stated sum as I recollect.

Q. Now, in these cases you made much the same sort of a report to Mr. Smith as you made in the other cases?

(Testimony of Frederick A. Kribs.)

A. I made reports from time to time and just when I made them I can't tell, but generally about every eight or nine months I would make some kind of a statement.

Q. And you reported the troubles that you were having in getting them expedited to patent?

A. I don't recollect so much about it. **[621]**

Q. Same as in the other case?

A. I don't know as there was any trouble that ever came about these particularly to cause any worriment. I don't remember.

Q. You had a great deal of correspondence with Stratford or with your attorney about it and getting Van Zante and Stratford started out taking affidavits, and writing to the Mealey boys about it and getting affidavits taken, didn't you?

A. There wasn't a very great amount of trouble.

Q. What?

A. There wasn't a very great amount of trouble.

Q. Well, they were held up two years, just the same as the others, weren't they?

A. No—let's see. I think they were issued in June, 1902.

Q. July—August. July 9th part of them, and August 12, part of them.

Q. I don't know the year, but they proved up.

Q. Held up practically two years?

A. Perhaps so.

Q. Yes, just the same as the others. Busy taking affidavits in them with Stratford, weren't you?

A. The affidavits didn't take a very long time.

(Testimony of Frederick A. Kribs.)

Q. And you paid—you paid Mitchell and Tanner $25 apiece for those entries the same as you had in the others? A. I did.

Q. Then you didn't have Pierce Mays employed?

A. I don't think he had anything to do with those.

Q. No, and you—did you have any correspondence with the Mealeys about those affidavits?

A. I can't recall any correspondence. I remember—I think I talked the matter over with them. probably I did.

Q. They came down here to Portland frequently about it?

A. They have been here. I have met them at Albany. **[622]**

Q. Did you have any—how many of those affidavits did you take in that case or help take—assist in taking?

A. I was up at Brownsville and there were not very many of the people there and I think I took two affidavits up there—possibly three; I don't recollect.

Q. That is this case?

A. That is the first case.

Q. Didn't you help take the affidavit of Rozell and one or two more in this case?

A. I don't remember those people at all.

Q. You had Mr. Van Zante and Mr. Tanner look after that?

A. At the time Mr. Van Zante went up to Sweet Home, I was not there at all.

(Testimony of Frederick A. Kribs.)

Q. The Mealey boys were there?

A. That is their home.

Q. And you hadn't—you didn't talk to any of those fellows up there personally?

A. No, sir, I was not up there at Sweet Home until about seven or eight years after. Those affidavits were taken in—

Q. You saw the affidavits when taken up there by Mr. Van Zante?

A. Some time after; I had copies of them.

Q. And when those fellows said they had transacted the matters personally with you, you knew that wasn't so?

A. Well, I wasn't there and the Agent took them. They made their own affidavits and he sent them off. I simply filed the affidavits away.

Q. I say, you saw there that the parties had made false statements as to their transactions with you?

A. I may have read it all over at the time. I don't recollect much about it. **[623]**

Q. Didn't make any impression on you then as being false at all?

A. I didn't look at it anyway. That where they had their mortgage—that it was to be for $600 or thereabouts and that would be covering the money that would be coming, as I understood it at that time, the idea I had, to the Mealey brothers and Thompson.

Q. You hadn't paid any money on a mortgage?

A. I paid the entrance fee.

Q. Yes.

(Testimony of Frederick A. Kribs.)

A. And then took a note for enough, to cover enough more to protect them in case the lands were not deeded, and I don't claim I did pay it.

Q. And you didn't pay another cent until you got deeds?

A. And when the deeds came down the mortgages and notes were returned to whoever had made them; and whenever the deeds came then the payment was made.

Q. In most instances, there wasn't any mortgage at all. Got deed the very same day.

A. I don't know as it is in most. Probably one-third of the cases that—I could tell that by looking up the data here. I never looked it up.

Q. Well, anyhow, whenever there was a mortgage, you never paid anything over, above the filing fees, or proof fees, until you got a deed?

A. No, whenever I got a deed I paid on those patents what I paid in the Land Office and the price that I had agreed to give for the land.

Q. The mortgage, instead of being security for a loan, was a bar to beating you out of getting the land? A. Well, not exactly.

Q. That was its purpose? **[624]**

A. It was not.

Q. What was its purpose?

A. In case they sold to anyone else I could put it of record and be protected for the money that I paid into the Land Office.

Q. That is, if you did not get the land that you started out to get? If the fellow violated his im-

(Testimony of Frederick A. Kribs.)

plied or expressed agreement with you people, then you would force him to pay the money that he had actually got of you—keep yourself whole?

A. There was no implied, around-behind-the-door business at all.

Q. You knew at that time that on proof—the final proof, in timber and stone entries required a man to testify he had not agreed to sell the land to anybody, didn't you?

A. He didn't have to do that. No claim—he had borrowed it and gave a mortgage on it.

Q. You knew that question was asked—whether or not you had agreed to sell your land to anybody since you entered it up to the present time?

A. Up to the time of proof?

Q. Yes.

A. Certainly, and the way they put it to me, they could answer no.

Q. Yes, and it was in order to evade that proposition that you fellows framed up that mortgage business? A. Nothing of the kind.

Q. So that you could pretend to be making a *bona fide* loan when you actually had an agreement and understanding with the fellow that you were going to get the land?

A. Nothing of the kind.

Q. You knew you were going to get the land in every case— **[625]** expected to?

A. I hoped to and expected to, but didn't know until I got it.

Q. You were so dead sure of getting it, you wasn't taking much chance.

(Testimony of Frederick A. Kribs.)

A. You take chances on everything and on every proposition, you go into.

Q. And the purpose of the mortgage was to evade that proposition that you thought was being required by the law at that time? A. No, sir.

Q. It wasn't?

A. No, sir. I have answered that a dozen times and will keep answering it the same way as long as you ask.

Redirect examination of Mr. Kribs applies wholly to case No. 3320. **[626]**

[Testimony of Irvin Rittenhouse, for the Government (Recalled in Rebuttal).]

IRVIN RITTENHOUSE, recalled in rebuttal.

Direct Examination.

(Questions by Mr. McCOURT.)

I think Mr. Rittenhouse has been called on this same case. He has testified in relation to some statements and affidavits that were taken before him. I show you, Mr. Rittenhouse, an affidavit or a statement, whatever you are a mind to call it, of J. A. Thompson, William R. Mealey and O. J. Mealey, dated the 13th day of January, 1905, and ask you whether or not you took that statement down in shorthand or transcribed it on the typewriter?

A. I took it down in shorthand and then transcribed it as the statement of O. J. Mealey and W. R. Mealey and J. A. Thompson.

Q. Who else was present there at the time besides yourself and the parties?

A. Well, Mr. Burns was present and probably

(Testimony of Irvin Rittenhouse.)

Mr. Heney. I don't know. It was taken in a room over here at the Portland Hotel—Mr. Heney's room.

Q. Yes. Was that a voluntary statement of those parties at the time?

Mr. LIND.—That is objected to as leading and calling for a conclusion.

Mr. McCOURT.—I will let you people ask the circumstances under which it was made.

Q. Was that correctly transcribed at the time?

A. Yes, sir. It was transcribed as taken.

Q. Did the parties read it at the time?

A. They read over it before they signed it.

Q. Understood it?

A. I suppose they did. Read over it before they signed it— **[627]** was sworn to it.

Mr. McCOURT.—I will ask to introduce the statement in evidence so far as it may be applicable against the defendants J. A. Thompson, William R. Mealey and O. J. Mealey.

COURT.—They are all parties?

Mr. McCOURT.—Yes, all parties.

Mr. UELAND.—It is understood it is not offered as against our clients.

Mr. McCOURT.—No.

Marked "Government's Exhibit 83."

[Government's Exhibit No. 83.]

"AFFIDAVIT.

O. Judd Mealey, William Mealey and John A. Thompson, being first duly sworn, depose and say:

We took up three timber claims in Linn County with the understanding that they were to be sold to F. A. Kribs at the top price, $5.25 an acre, and after

making final proof we deeded the claims to Kribs or some party who he designated as his agents. We then had an understanding with Kribs that whatever other claims we got for him were to be at a much less price. We had an understanding with Kribs that he was to furnish the money to make final proof. We secured about 23 claims under this arrangement, paying the claimants $50.00 each in the transaction, and all their expenses. After locating these men we took them to the Roseburg land office and had them make their filings, and when the time came for making final proof we again took them to Roseburg to prove up. We took them at two different times, and on the first occasion Kribs himself was at Roseburg and attended to paying the final proof money; on the second occasion Kribs was not at Roseburg, but Mr. Kribs had advised us by letter **[628]** that he had made arrangements at Roseburg to have the final proof payments made. After we took the men to the land office to make final proof and at the time said proof was made, Judd Mealey signified to the officials by a nod or a look that they were Kribs' men, and walked out, not paying any final proof money, but understanding as we had been informed by Kribs that he had attended to the matter. We then had the men sign certain notes, mortgages, and deeds, conveying the lands to Kribs through his agents. We then paid the men $50.00 apiece, and we received from Kribs two-thirds of the amount we were to receive, the other third being retained by him until patents were issued. Our profits on each claim amounted to about $92.00 each, or about $275.00 on each claim, which we divided between us.

(Testimony of Irvin Rittenhouse.)

This is the general plan under which we worked for Kribs in this deal.

J. A. THOMPSON.
WILLIAM R. MEALEY.
O. J. MEALEY.

Subscribed and sworn to before me this 13th day of January, 1905.

WILLIAM J. BURNS,
Special Agent G. L. O."

Q. You notice, Mr. Rittenhouse—you work in the General Land Office, don't you? A. Yes, sir.

Q. How long have you been in the General Land Office? A. Since December 1, 1899.

Q. Have you noticed what is commonly called the Stratford reports in this 3320 case?

A. Yes, sir, I am familiar with those entry papers in these cases. **[629]**

Q. Is there any way by which those affidavits that are printed might be printed through the authority of the Land Office? A. No.

Mr. LIND.—That is objected to as incompetent. The witness not having shown himself competent to give an opinion on that question.

Q. Well, are you familiar with that?

A. Thoroughly familiar; in fact, I have charge of the preparation of blanks in the General Land Office and records. I am supervisor and have charge of the records of the General Land Office in addition to my duties in the Accounts Division. I am as familiar as anybody in the General Land Office with all papers that are prepared there and have been prepared for the last eight or ten years.

(Testimony of Irvin Rittenhouse.)

Q. Well, is there any way by which printed matter of that kind is made up under the authority of the Land Office?

A. Never under authority of the General Land Office.

Cross-examination.

(Questions by Mr. LIND.)

When did you first observe these printed copies?

A. In December or January—December, 1904, or January, 1905.

Q. Were you at any time connected with Division "P" or examination of entries under suspension for one purpose or another—prior to that time?

A. No, sir.

Q. You say that the presence of these printed copies of affidavits were something unheard of, unusual, unknown? A. Very unusual.

Q. Unknown, uncommon?

A. Uncommon. **[630]**

Q. Wouldn't that fact, if so, have excited unusual suspicion in the General Land Office and in the Secretary's office?

A. No doubt did. It would and it did.

Q. It is a suspicious fact in itself, was it?

A. Yes, sir.

Q. A badge of fraud?

A. Well, not necessarily a badge of fraud, but a circumstance that would warrant further investigation when they find a batch like this in contiguous tracts.

Q. Was there any further investigation on that score?

(Testimony of Irvin Rittenhouse.)

A. Well, that may have had something to do with further investigation—with the holding up of those claims in addition to the protest filed there in 1900. As a matter of fact, since I come to think of it, the clerk who had charge of those cases, Ogden, if I am not mistaken, said that was one fact in connection with them that aroused his suspicion—those printed affidavits.

Q. That aroused the suspicion of the Commissioner's office or of the Secretary's office?

A. I don't know anything about the Secretary's office.

Q. That was what caused the thorough sifting and investigation of these cases before they went to patent, was it? A. One of the circumstances.

Q. Now, at the time that statement received in evidence was taken, do you remember the date?

A. Well, Mr. McCourt's statement of it—I wouldn't have remembered it independently. I knew it was January some time. It is January 13, 1905.

Q. How soon was it after you came here?

A. About a month after I came here. I got here in December, 1904. **[631]**

Q. At the time that that statement was signed by the parties named, did you know them personally?

A. Only from seeing them occasionally around the rooms over there at the hotel.

Q. How many times do you think you had seen them around those rooms at the hotel prior to the time of that signing?

A. Well, I think they were around there several

(Testimony of Irvin Rittenhouse.)

times before we finally took their statement. There were so many; there were probably fifty or a hundred entrymen around there at the time. I could not state definitely.

Q. Well, these men had been around two or three weeks, had they not?

A. They had been in town for quite a while, I think.

Q. Under subpoena? A. Under subpoena.

Q. Interviewed from time to time?

A. No, they weren't interviewed by us from time to time. By "us" I mean by Mr. Burns and Mr. Heney, so far as I know.

Q. Were you with Mr. Burns all the time?

A. A good deal of the time.

Q. Were you with Mr. Heney all the time?

A. Off and on. I worked for both of them.

Q. How many times had these men been interviewed, to your knowledge?

A. Well, my recollection is that they hadn't been interviewed more than once or twice before their statement was taken. I know they were around the hotel.

Q. How did they come to make this statement? Did they volunteer it?

A. Yes, they volunteered it.

Q. Why did they volunteer it?

A. You will have to ask them. I don't know. They probably **[632]** were scared after those others came in. The entrymen came in and were giving statements as had been reported, and why they volunteered, I don't know.

(Testimony of Irvin Rittenhouse.)

Q. Was Puter there a good share of the time?

A. Yes, sir, Puter was around a good deal.

Q. Constantly in those rooms?

A. Not constantly, no, sir.

Q. Well, I mean every day?

A. No, not necessarily every day. Mr. Heney and Mr. Burns didn't have Puter around there all the time, because Mr. Puter just came over to the Government, as it were, and they weren't willing to have him around and know everything that was going on.

Q. Well, he interviewed all those men, did he not?

A. No, sir, not all of them.

Q. I mean, most of them?

A. He would get leaders to us.

Q. You heard him testify on the stand yesterday?

A. Yes, sir.

Q. You noticed,—you heard him say that he made statements to the parties that they must confess—admit some wrongdoing in order to be permitted to make a statement and be excused and go home. Did you hear those statements made?

A. I heard—Mr. Puter's statement or the statements that he says?

Q. Did you hear the statement on the stand?

A. I heard Mr. Puter's statement, yes, sir.

Q. Did you hear statements of that character made in those rooms? A. No, sir, I did not.

Q. Will you swear that those statements were not made to those parties who signed statements of this character? [633]

A. Oh, I don't know what Mr. Puter said to those

(Testimony of Irvin Rittenhouse.)

parties. I don't know. Of course I wouldn't swear to that.

Q. But now, Mr. Rittenhouse, speaking as an officer of the Government, and knowing the situation as you do, is it your judgment that statements of that kind were not made? I will take your judgment upon it.

A. Yes, sir. It is my judgment that statements of that kind were not made.

Q. By whom?

A. By Mr. Burns or by Mr. Heney. As to what Mr. Puter said to these men, I don't know.

Q. He was commissioned by Mr. Burns to round these fellows up, was he not?

A. I don't think he was, no sir.

Q. He did as a matter of fact, did he not?

A. He may have helped to get them around there.

Q. Don't you know that he did?

A. I don't know that he did. I think Andy Nicholls was the man that did most of the work.

Redirect Examination.

Mr. McCOURT.—I have a letter written by Mr. O. J. Mealey that I would like to introduce in connection with that affidavit.

Mr. LIND.—No objection. Of course, not as against any of our clients.

Letter marked "Government's Exhibit No. 84," and read as follows:

[Government's Exhibit No. 84]

"Foster, Oregon, Jan. 18, 1905.

Mr. W. J. Burns,
Portland, Oregon.

Dear Sir:—

Knowing that you were very busy I thought best **[634]** not to intrude on your time at Portland. In regard to those two men (Pickens and Gilliland) who failed to give affidavits, if it is your desire you may forward them with instructions and I will do as instructed by you and will gladly assist you in any manner possible. These men's cases are similar like the rest that made proof at Roseburg. Mr. Pickens if you remember was sick, consequently was not able to return to Portland this last time, while Mr. Gilliland was excused to come home to attend to his sick wife, and has never been discharged and has instructed me to write you regarding his case and wishes to sign the affidavit and be discharged, but does not know what to do regarding his mileage on his subpoena. Trusting that you will instruct me in this matter, will close.

Yours respectfully,
O. J. MEALEY."

Mr. McCOURT.—Here are a couple of deeds. Deed of O. J. Mealey and wife to Frederick A. Kribs; deed of John A. Thompson and wife to Frederick A. Kribs. I think that perfects the deed part of the record.

Mealey deed marked "Government's Exhibit 85."

Thompson deed marked "Government's Exhibit 86."

Witness excused. **[635]**

[Testimony of Fred Wodtli, for the Government (in Rebuttal).]

FRED WODTLI, a witness called in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

You live at Sweet Home?

A. At Foster.

Q. And where do you live with relation to the store of Watkinds?

A. About half a mile at that time, away from the store. I lived with my father at that time, but at present I am living at Foster.

Q. Well, I want to ask you about certain persons that you have talked with up there. During the year 1900 do you recall Joseph O. Mickalson, Joseph Steingrandt, Oliver Errickson, John Gilliland, Alexander Gould, and Richard Watkinds, taking up timber claims in that part of the country? A. Yes.

Q. Did you have any conversations with those persons or any of them up to the time they made their entries or proofs, as to what they had received for their claims, or the circumstances under which they had taken them? A. Why, it was open talk—

Mr. UELAND.—Just answer yes or no. Don't say what was said. Did you have such talk with them? Just say yes or no. A. Yes.

Q. And where did you talk to Joseph Mickalson?

A. In the post office Sweet Home.

Q. Was he alone there? A. Yes.

Q. What did he state to you about his claim?

Mr. UELAND.—Objected to as hearsay and in-

(Testimony of Fred Wodtli.)

competent **[636]** against the defendants we represent.

COURT.—Was Mickalson a party to this suit?

Mr. McCOURT.—Yes, sir, and it was at a time when the conspiracy, so far as anybody was related to it, was in active consummation.

COURT.—You can ask as against Mickalson, as he is charged in this bill as one of the conspirators.

Mr. McCOURT.—We want to except to the limitation if the Court please, so that if the Court should find we should be allowed a little more leeway later, we are entitled to our right.

Q. What did Mickalson say there?

A. He told me he was getting $50 like the rest of them.

Q. From whom did he say he was getting it?

A. From the Mealeys.

Q. Was that before he made proof or afterwards, or do you recall?

A. I couldn't—I couldn't say whether it was before or after.

Q. How near was it to the time at which he had made his proof—that is, relatively; it is a long time ago.

A. It was somewhere there close to proof or after.

Q. And Joseph Steingrandt—where did you talk to him? A. At the mill.

Q. At the mill that you were operating there?

A. Yes, sir.

Q. And did he talk to you about this timber claim? A. Oh, yes.

Q. Was that before he had filed or before he

(Testimony of Fred Wodtli.)
proved up afterward?

A. I would judge it was before he made proof.

[637]

Q. What did he say?

A. He was getting $50.

Mr. UELAND.—We want the same objection.

Mr. McCOURT.—The same objection will follow.

Q. Did he say who he was getting that from?

A. Yes, from the Mealeys.

Q. Oliver Errickson—did you talk to him?

A. Yes.

Q. Where did you have your conversation with him? A. Right here in Foster.

Q. Was he alone or in a crowd?

A. Well, I couldn't say as to that, whether he was alone or not, but I had talked to him there in Foster in regard to this.

Q. What statement did he make in relation to his timber claim? A. He was getting $50.

Q. Was that before he had made proof?

A. I couldn't say as to that. It was about that time—close to that time.

Q. And John Gilliland?

A. I couldn't recall just the exact time that I had talked to him, but then I knew that he was—he had taken up a claim.

Q. Where did you talk to him?

A. I believe it was in Foster.

Q. Alone there or in a gathering?

A. I couldn't state now exactly that it was in a gathering, or whether it was just by himself.

Q. Well, what did John say about it?

(Testimony of Fred Wodtli.)

A. He was getting $50.

Mr. UELAND.—Same objection. [638]

Q. Whom did he say that was from?

A. From the Mealeys.

Q. Alexander Gould?

A. Yes, I talked to him at Foster too.

Q. Was that before or after he had made his proof?

A. I couldn't say as to that, but I think it was after.

Q. How long after?

A. Oh, it might have been a week or ten days—maybe two weeks. When he got back.

Q. And what did Alex say? A. He got $50.

Q. Did you talk to Richard Watkinds?

A. Yes.

Q. Where did you talk to him?

A. In the store.

Q. Was that before he had made proof?

A. I couldn't say as to that, whether it was before or after. He got—

Q. How near the vicinity of proof time was it?

A. It might have been two weeks either before or after. I couldn't say just the day. It is kind of faint in my memory.

Q. What did Richard Watkinds say?

A. He told me he got $50.

Q. From the same parties? A. Yes.

No cross-examination.

Witness excused. [639]

[Testimony of Frederick A. Kribs (Recalled for Further Cross-examination—in Rebuttal).]

FREDERICK A. KRIBS, recalled for further cross-examination.

(Questions by Mr. McCOURT.)

While on the claim of Richard Watkinds, Mr. Kribs, do you recall the postponement of his proof?

A. I do not.

Q. That it was postponed beyond the time, beyond October 9th, until a week later—ten days later?

A. I recall a check of $410.75, I think was for his portion, but for what reason—why it was later, I do not know.

Q. Don't you recall that it was discovered about the time that Watkinds was to start for Roseburg, there was a judgment against him up there in Linn County, and they couldn't permit him to make proof until that was gotten out of the way?

A. That is the first time I have heard of it—was right now.

Q. You don't know—didn't see that—didn't know anything about it? A. No, sir.

Mr. McCOURT.—May the record show that there was such a judgment? Something like $80 against Mr. Watkinds in Linn County, and that it was satisfied on October 16th?

Mr. LIND.—If you know it to be a fact, just state that fact, but we don't want any inference to be stated in the record.

Mr. McCOURT.—I can't recall now who the judgment was in favor of.

Mr. LIND.—It is immaterial.

(Testimony of C. J. Reed.)

Mr. McCOURT.—It is understood that the question asked by counsel for the Government of counsel for the defendants may stand as a statement in the record and it is agreed that such was the fact. **[640]**

Mr. LIND.—Subject, of course, to the objection as to competency and relevancy.

Witness excused. **[641]**

[Testimony of C. J. Reed, for the Government (in Rebuttal).]

C. J. REED, a witness called on behalf of the Government in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

You are the Marshal? A. I am.

Q. United States Marshal? You were such Marshal in 1908? A. I was.

Q. Do you recall the lodging in your hands of the subpoena ad respondendum in this case?

A. For whom?

Q. Against the defendant C. A. Smith?

A. Yes.

Q. In fact, against all the defendants?

A. Yes, all of them.

Q. State what information you had at that time, or secured at that time, as to the presence of Mr. Smith in Oregon and what effort you made to serve Mr. Smith personally in Oregon.

Mr. LIND.—That is objected to as immaterial.

Mr. McCOURT.—I think, if the Court please, it is material. Counsel has indicated an intention of

(Testimony of C. J. Reed.)

claiming here that because a regular subpoena ad respondendum was issued followed by an application for substituted service rather than an original application for substituted service, that the statute as to eight of these claims, ran before a proper process was issued, and I want to show that as far as the defendant C. A. Smith was concerned, the Government understood he was in Oregon, and made an effort to serve him in Oregon. **[642]**

Mr. LIND.—Counsel entirely misapprehends our position. We do not criticize the form of the process by which these defendants were brought into court. He directed that and that is his privilege and pleasure, but we say that as to a nonresident defendant there is no service against him until a proper process be issued against him as a nonresident defendant. That is our position.

COURT.—I suppose the Government can show what they did under this process, for the purpose of making up the record.

Q. Go ahead.

A. Well, my records show and the accounts of the deputies who served this process, which are all a matter of record, that about May 30, 1908—

Mr. UELAND.—We don't think that is competent evidence.

COURT.—I suppose the Government wants to show what diligence he made to attempt to serve Mr. Smith.

Mr. UELAND.—Would a record in the Marshal's office prove that?

COURT.—The Marshal testifies from his records.

(Testimony of C. J. Reed.)

Mr. McCOURT.—He will supplement that by recollection.

A. My record shows the dates only,—the dates of the accounts. About that time—

Mr. UELAND.—Have you any personal recollection of those things you are testifying about?

A. Absolutely—so far as the facts are concerned, but not of the dates without looking up the accounts. I have a personal recollection of the facts, because they were all in my hands and these men did this work by my instructions absolutely.

COURT.—You may testify to what you know.

A. I was told in my office—Mr. Puter came to my office **[643]** and notified me Mr. Kribs was in town—or Mr. Smith was in town—was staying at Mr. Kribs' house. Mr. Puter was very anxious that Mr. Smith should be served, and I sent men to Mr. Smith's house about that—Mr. Kribs' house about that time. They called there and asked for Mr. Smith, and also went to Mr. Kribs' office, and were told in every case that Mr. Smith was not here, although Mr. Puter said that he saw him here in town with Kribs, and I made no service at that time. We didn't succeed in finding Mr. Smith. Then later Mr. Smith was reported to be up in the 11-7 country, around Sweet Home; had been seen at Brownsville, and I had a man go up there and make careful search and he couldn't find him; didn't find him.

Then later in August of that same year we heard that he was at Marshfield, and I had a man go down to Marshfield, and we didn't succeed in serving, although the report was that he had been there and

(Testimony of C. J. Reed.)

gone. Then later, in February, we found him at Marshfield at the mill, and that was when he was served.

Q. Did they serve him twice?

A. Once.

Q. I had him served in Minnesota on August 11th.

A. Yes, but I didn't serve him in Minnesota. This is a record of my office. I served him here and as soon as—

Q. Must have been an alias subpoena ad respondendum issued.

A. Possibly—I didn't look that up.

Q. I think returned on July 8th.

Mr. UELAND.—Possibly it was mistake and he wasn't served in Marshfield. He was served in Minnesota.

Witness excused.

Government rests.

Defense rests. **[644]**

Government's Exhibit No. 1.

No. 3319.

Roseburg, Oregon, Aug. 27, 1900.

PAID No. ——

Sep. 1, 1900,

Roseburg, Ore.

FIRST NATIONAL BANK OF ROSEBURG.

Pay to J. H. Booth, or Bearer, $3696 46/100 Thirty six hundred ninety six and 46/100 Dollars.

FRED A. KRIBS.

UNITED STATES

INTERNAL REVENUE

Documentary Stamp 2 Documentary Stamp 2

(ENDORSED)

J. H. Booth

2

Filed May 10, 1910. G. H. Marsh, Clerk. **[645]**

Government's Exhibit No. 2.

No. 3319.

MEMORANDUM CHECK.

FIRST NATIONAL BANK.

Roseburg, Or., 10/10, 1900.

Paid Land Office for 10 claims, $4155.68 On bank's acct. Charge

FRED A. KRIBS.

Paid Oct. 10, 1900.

Roseburg, Oregon.

Cop. on C. A. S. Acct. On new Bank Ledger.

Filed May 10, 1910. G. H. Marsh, Clerk. **[646]**

Government's Exhibit No. 3.

No. 3319.

MEMORANDUM CHECK.

FIRST NATIONAL BANK.

Roseburg, Or., 10/17, 1900.

Paid Land Office on Richd. C. Watkin.

$410.61. Charge

FRED A. KRIBS.

PAID

OCT. 17, 1900.

FIRST NATIONAL BANK,

ROSEBURG, OREGON.

Cop. C. A. S. deal. Also on Roseburg Bank Acct. New Bank Ledger.

Filed May 10, 1910. G. H. Marsh, Clerk. **[647]**

Affidavit of W. W. Billings in Government's Exhibit No. 4.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Fraudulent Entry of WM. W. BILLINGS to the N. W. ¼ of the N. W. ¼ of Sec. 17, and the N. ½ of the N. E. ¼ and the S. W. ¼ of the N. E. ¼ of Sec. 18, Tp. 14 S., R. 3 E.

WM. W. BILLINGS, being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation and place of residence.

A. William W. Billings; age, 63; occupation, a farmer; place of residence, Foster or vicinity.

Q. Are you the same person who made a timber entry of the land above described? A. Yes.

Q. Who, if anyone, first suggested to you the advisability of taking up this land?

A. No one in particular, it was generally spoken of through the country.

Q. How far do you reside from this land?

A. About five or six miles.

Q. Who, if anyone, selected this land for you or

located you on the land?

A. Mr. John Thompson.

Q. How much, if anything, did you pay him for his services?

A. About $40.00 or $50.00. He was owing me at the time.

Q. How thorough an examination, if any, did you make of the land before you applied to enter it?

A. We started at the N. E. corner section 18, and went clear across the quarter sec. by pacing, then we went west at least two or three **[648]** hundred paces, and came back through the land the whole leng*ht* of it by compass, so that I pretty thoroughly understood the land. I had a general knowledge of the land before that time.

Q. How did you identify its land by its numbers as being the land on which you afterwards filed?

A. We went to and examined the witness trees at the N. E. corner of Sec. 18.

Q. What was your intention at the time you made this entry as to the use you intended to make of this land, after you had obtained the title thereto?

A. I, like *the* maony of the people in here, was looking for big interest in lumberings. I have a family of three large boys that were interested very much in obtaining steady work; I didn't know but that I might lumber it myself. I was in hopes that the wheel of fortune would turn to my advantage.

Q. What disposition did you make of the land after you had obtained the title?

A. I was too poor to retain it. I sold it to Frederick A. Kribs for $800.00.

Q. On what date did you make your final proof?

A. It was tolerable well in August; I don't re-

member the date exactly.

Q. How long was it after you made your final proof before you sold the land to Mr. Kribs?

A. About a week, I think.

Q. Did you have the transaction with Mr. Kribs personally, or did someone act as his agent in making the sale.

A. Knowing from the advertisements in the paper that I could borrow money for the paying out on this land, I obtained temporarily from Mr. O. J. Mealey money sufficient to pay out on the land. He told me that Mr. Kribs would advance me the money on mortgage. I being a married man, I had to secure him a little better than some others. **[649]**

Q. I understand you to say that Mr. Mealey acted as the agent of Mr. Kribs?

A. Not at all only so far that he introduced me to Mrs. Kribs; if he had *a* any further interest as an agent I don't know.

Q. Did you borrow the money or any part thereof with which you paid the Government for this land and the other expenses, and if so of whom?

A. I borrowed *a* most of the money from Mr. O. J. Mealey; I had little myself. I am a Government dependent, myself.

Q. If you borrowed the money of Mr. Mealey, $600.00, why did you give Mr. Frederick A. Kribs a mortgage for the amount?

A. It was a temporary—to O. J. Mealey which had to be met. I knew nothing of Mr. Kribs until I received it of Mr. Mealey; of course, I had seen Mr. McKinley's advertisement in the Brownsville papers that he would *would* furnish money for men

to making final proof.

Q. When did you first make arrangements with Mr. Kribs to get the money of him to pay Mr. Mealey?

A. Late in the afternoon of the day that I made final proof of the land at Roseburg. I believe it was the only time I ever saw Mr. Frederick Kribs.

Q. Did you at the same time and place make arrangements with Mr. Kribs to let him have the land for $800.00? A. No, sir.

Q. When and with whom did you make the agreement to let Mr. Kribs have the land for $800.00?

A. I can't tell the date; *it well* in the latter part of August, the last day, perhaps. It was through Mr. O. J. Mealey.

Q. Is it not a fact that you made your final proof about the 26th or 27th of August, and that the deed was made the 1st of September following that?

[650]

A. It might have been, but I was thinking it was the last of August, although it may be the 1st of Sept.

Q. How did you come to make the sale of the land to Mr. Kribs through Mr. Mealey?

A. Because I was virtually obliged to; I felt that I could not hold it in any way, and indebtedness had to be met.

Q. Who paid you for the land Mr. Kribs or Mr. Mealey?

A. Mr. Kribs paid me for the land; it came through Mr. Mealey.

Q. Where did you receive the money?

A. I received the money at home. Mr. Mealey brought it down to me.

Q. Where was the mortgage drawn to Mr. Kribs?

A. I couldn't tell you that.

Q. Where did you sign it yourself?

A. I signed it at home, I think, but am not certain; my wife and I both signed it together.

Q. You may state anything further which you desire in regard to this transaction.

A. Nothing more that I can think of now.

WM. W. BILLINGS.

Subscribed and sworn to before me this 7th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[651]**

Affidavit of John J. Gilliland in Government's Exhibit No. 5.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JOHN J. GILLILAND to the N. W. ¼ of Sec. 28, Tp. 14, S. R. 4. E.

JOHN J. GILLILAND, being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation and place of residence.

A. John J. Gilliland; age, 30; farmer; Foster, Linn County, Oregon.

Q. Are you the same person who made a timber entry to the land above described?

A. Yes, sir.

Q. Who, if anyone, first suggested to you the advisability of taking up this claim? A. No one.

Q. How did you happen to take the land?

A. Well, I thought I needed it.

Q. What did you think you needed it for?

A. Probably for what timber was on it.

Q. What use did you expect to make of the timber?

A. I thought sometime the timber might be valuable.

Q. Who, if anyone, located you on the land?

A. Mr. Wm. Mealey.

Q. How much, if anything did you pay him for his services? A. $50.00.

Q. When did you pay him?

A. I don't recollect just exactly sometime before I made final proof.

Q. How did you happen to get Mr. Mealey to locate you? A. Well, he was in that business.

Q. How far do you live from this land? [652]

A. About 12 miles.

Q. Has you ever been on this land prior to the time you was shown it by Mr. Mealey?

A. No, sir.

Q. How did you identify the land which you examined as the land on which you afterwards filed?

A. By the corner posts and witness trees.

Q. How thorough was the examination which was made by you of the land?

A. Why, I went over the land and looked at it.

Q. Are you sufficiently experienced in estimating timber to be able to give the amount of timber on this land? If so, state the amount.

A. I am no expert but I suppose about 40 to 50,000 to the acre.

Q. What disposition did you make of this land arter you obtained the title?

A. Sold to Frederick A. Kribs for $850.00.

Q. On what day did you make final proof?

A. The 9th, I think, of October.

Q. When did you sell the land?

A. I sold it a day or two after I proved up.

Q. What was the cause or motive which induced you to sell the land so soon after you had obtained title to it? A. I wanted the money.

Q. What for?

A. I wanted it for other purposes.

Q. What was your intention in regard to the use you would make of the land or the timber at the time you made your entry?

A. I thought sometime I might want to sell it.

Q. Did you believe at the time you made your final proof that you would sell the land or the timber in a day or two after you made your proof? **[653]**

A. No.

Q. What caused you to change your plans in regard to the matter? A. I needed the money.

Q. Did you need it any worse a day or two afterwards than the day you made your proof?

A. Yes, sir.

Q. What was the occasion of your needing it at that time? A. I was in debt.

Q. Did you borrow the money or any part thereof with which you paid the Government for the land or the expense incident to the entry? A. Yes.

Q. Who of and what amount did you borrow?

A. $700.00 of Mr. Frederick A. Kribs.

Q. When did you receive the money of him?

A. I don't recollect just exactly when I got it.

Q. Did you have this transaction with Mr. Kribs personally, or did someone act as his agent in loaning you the money?

A. O. J. Mealey acted as his agent.

Q. How did you ascertain that Mr. Mealey had money to loan for Mr. Kribs?

A. He told me he did.

Q. Where did you receive the money from him?

A. At Roseburg.

Q. At the time you made your proof?

A. Yes, sir.

Q. Was Mr. Kribs present when the money was passed to you? A. No, sir.

Q. Was the money you borrowed paid you in a check or in cash? A. In cash.

Q. Did you give a note or a mortgage for the amount? A. I give a mortgage. **[654]**

Q. On this land?

A. Yes, sir; on the land I entered.

Q. When was the question of your selling the land first mentioned and by whom?

A. Directly after I proved up. The evening of the same day.

Q. Who was the conversation with?

A. O. J. Mealey.

Q. State what was said as near as you can.

A. I told him I wanted to sell the land and he said he would buy it.

Q. Did he say he would buy it for himself or for Mr. Kribs?

A. I don't know as he said. We just talked over about selling the land, agreed on the price that evening.

Q. Was the deed made out then and there and brought home by you to be signed by you and your wife? A. Yes, sir.

Q. Are you personally acquainted with Mr. Kribs? A. No, sir.

Q. Well, as I understand you, both the transactions of your borrowing the money of Mr. Kribs to pay for the land, and the sale of the land to him was through Mr. O. J. Mealey as his agent, is that correct? A. Yes, sir.

Q. You may state whether or not prior to your having made your final proof you had any contract or agreement, either expressed or implied, with Mr. Mealey, Mr. Kribs or anyone else that you would sell the land or any part thereof or any of the timber thereon to anyone after you had obtained the title to the same. A. Not to no one.

Q. You may state anything further which may occur to you as being proper and competent testimony in this investigation.

A. I don't know as I have any more testimony.

[655]

Q. Is it not a fact that the mortgage and the deed were both written out at the same time and place and by the same party?

A. Yes, I believe it was.

Q. Do you remember where the office was located in which the deed and the mortgage were written out? A. Not exactly I don't; no.

Q. Was it not in the same building as the Land

Office and just across the hall from the Land Office?

A. No, sir.

J. J. GILLILAND.

Subscribed and sworn to before me this 11th day of November, 1901.

E. D. STRATFORD,
Special Agent, G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[656]**

Affidavit of W. J. Lawrence in Government's Exhibit No. 6.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of W. J. LAWRENCE to the E. ½ of the SW. ¼ and the S. ½ of the SE. ¼ of Sec. 20, Tp. 14, S. R. 4 E.

W. J. LAWRENCE, being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation and place of residence.

A. W. J. Lawrence; age, 34; occupation, laborer; Sweet Home, Linn Co., Or.

Q. What induced you to make this timber land entry? A. Cause I wanted one.

Q. What did you expect to do with the land or the timber after you had obtained the title to it?

A. Well, I don't know that I expected to do anything with it.

Q. Who, if anyone, located you on the land?

A. Mr. John Thompson located me.

Q. How far do you reside from this land?

A. About 19 miles.

Q. How did you go from your home to the land?

A. I went to Mr. Mealey's on horseback and on foot from there.

Q. Did you examine the land thoroughly before you made your filing? A. I did.

Q. How did you identify the land by numbers as being the land on which you afterwards filed?

A. By the numbers the locater gave me, and from the corner posts on the land.

Q. Can you describe the land having reference to the amount and kind of timber, the streams, if any, running through it? **[657]**

A. It is mountainous land covered with fir timber; I should think about 40,000 or 50,000 to the acre. One stream a tributary to Canyon Creek flowing north.

Q. What disposition have you made of the land since you obtained the title to it? A. Sold it.

Q. To whom did you sell it and how much did you receive for it?

A. I got Mr. Mealey to act as my agent and got it off from my hands.

Q. Then, as I understand you, you don't know who you sold the land to nor how much you received for it—is that correct?

A. I know what I received. I got Mr. Mealey to sell it for me, I got $50.00 over amount of mortgage.

Q. When did you make your final proof?

A. October the 9th, I think.

Q. Did you borrow money or any party thereof with which you paid for the land? A. Yes, sir.

Q. What was the amount and from whom did you borrow it?

A. From Mr. O. J. Mealey, he furnished the money and I don't know what *what* the amount was, but think it was $700.00.

Q. Did you give any mortgage to secure the amount? A. Yes, sir.

Q. When and where did you give the mortgage?

A. At Roseburg.

Q. Was the mortgage in favor of Mr. Mealey or in favor of Mr. Kribs?

A. I don't remember who but I believe it was Mr. Kribs.

Q. When did you sell the land?

A. I think it was about five or six days after I proved up.

Q. Why did you sell the land so soon after having obtained the title thereto?

A. So as to get the money. **[658]**

Q. How much money was paid to you by Mr. Mealey for Mr. Kribs at the time you made the deed and gave it to Mr. Mealey? A. $50.00.

Q. How much money did you borrow on the land?

A. I believe it was $700.00; I don't know.

Q. Where and when and with whom did you have the first conversation with reference to a sale of the land after you have completed your final proof?

A. In Roseburg with Mr. Mealey, I believe it was the same day that I proved up.

Q. Can you give the substance of that conversation?

A. I wanted some money and Mr. Mealey said he believed he could help me get it off my hands or something like that.

Q. Did you at that time agree on the price?

A. No, sir.

Q. When and where did you agree on the price?

A. I just took from him what he could get out of it for me. I don't remember I got it here in Sweet Home.

Q. You may state anything further which may occur to you as being proper and competent testimony in this investigation.

A. I have nothing further to state, except that Mr. Mealey acted as agent only, in assisting me to procure the money for final proof and in the sale of the land.

W. J. LAWRENCE.

Subscribed and sworn to before me, this 8th day of November, 1901.

E. D. STRATFORD,
Special Agent, for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[659]**

Government's Exhibit No. 7.

REPORT OF FRAUDULENT CLAIM OR ENTRY.

1. Name of claimant: Richard F. Malone; Sweet Home, Oregon.

2. Description of land covered by filing or entry: N. W. ¼ Sec. 22, Tp. 14 S. R. 4 E.

3. Date of Examination.....

4. Character of land: (Timber, Mineral, Agricultural, or Desert). If timber land, whether, if cleared, it would be unfit for agriculture; if for timber-culture entry, whether section is naturally devoid of timber; if desert, whether grass or other agricultural crop could be produced without arti-

ficial irrigation; if mineral, character and evidence thereof: Heavily timbered rough mountain land, unfit for cultivation if cleared and more valuable for its timber than for any other purpose.

5. Date and number of filing or entry; if proof has been made, date of proof and number of final certificate: Proof made Oct. 9, 1900. No. 8510. T. & S. entry.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant, and nature of claim: No.

7. Is the land inclosed for stock ranging or other purposes, and if so, by whom? Give extent of such inclosure, and describe the land inclosed: No.

8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold: No timber has been cut or removed from this land.

[660]

DIAGRAM OF LOCALITY OF CLAIM.

9. Indicate on the diagram the tracts covered by the entry or filing, and all roads leading from the same, stating to and from what points they lead, and distances; also note by appropriate marks the location of buildings upon the land, and state in your explanation below the means adopted to identify the land as that covered by the claim under investigation.

Township No. 14 S. Range No. 4 E. Will. Mer.

Explanation **[661]**

10. Character, extent, and value of improve-

ments in detail, when and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were constructed, and cost of same. If a timber-culture entry, amount and date of breaking, planting, etc.: There are no improvements on the land.

11. Residence of claimant: When actually established on the land, and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land, or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to make the entry, and is known in the neighborhood of the claim:

12. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant: Whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferee, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record; whether the entry has been abandoned or relinquished, and if so when and for whose benefit:

Book 66 of Deeds, page 132, Records of Linn Co., Oregon, shows deed from Richard F. Malone and wife to Frederick A. Kribs, dated Oct. 12, 1900; consideration, $850.00

13. Names, locality of residence, and postoffice

address of witnesses; their reliability; abstract of their testimony: I attach hereto the testimony of the entryman.

14. Was the fraud willful? It is difficult to say, perhaps through ignorance of the law.

15. Have any legal proceedings been instituted? No. **[662]**

16. Action recommended by agent: I recommend that the entry be held for cancellation for reasons set out more fully on attached sheets.

16. Continued: This entry is *on* of a list of 21, which were made at the Roseburg, Oregon, land office, of lands in the Eastern portion of Linn Co., Oregon, being in Tp. 14 S., Ranges, 2, 3 and 4 E. The entries being as follows:

R. C. Wadkinds,	John J. Gilliland,
John A. Thompson,	Sidney Scanlan,
W. W. Billings,	Joseph O. Mickalson,
Joseph Steingrandt,	Charles Wiley,
Richard F. Malone,	J. W. Rozell,
Samuel D. Pickens,	O. J. Mealey,
W. J. Lawrence,	Fred Wodtlie,
Cornelius N. Tuthill,	Louis Maynard,
Thomas Parker,	Oliver Erickson,
Geo. W. Pickens,	Alexander Gould,
Andrew Wiley,	

All those entries were made by parties, who at the time, at least that the entries were made, lived in the county in which the land is located. In each case the land was sold shortly after final proof was made, to Frederick A. Kribs of Minneapolis, Minnesota. The transfer of the land appears, with one

or two exceptions, to have been made within from one to three days after proof was made. The longest period between proof and sale, being in the *acse* of Fred Wodtli, where proof was made on August 16th, 1900, and the sale on the 24th day of September, 1900.

In many of the cases, the said Frederick A. Kribs loaned the entryman the money with which he paid the Government for the land and the expense incident to the entry. In no case except that of Fred Wodtli does the entryman offer any reasonable cause for the sale so soon after proof, and in no other case is there offered any reason for the entry, except for pure speculation.

It appears to me that the statements of the entrymen, when considered in connection with the sale so soon after final proof, makes a good *prima facie* case of fraud in connection with the entry **[663]** in each case above mentioned except that of Fred Wodtli, under the construction placed by the Department upon the provissions of thé Timber and Stone Act requiring that entries of this kind shall be made only for the exclusive use and benefit of the entryman, as laid down in the case of U. S. vs. Bailey et al. (17 L. D., 468), and U. S. vs. Searles et al. (19 L. D., 258), to which my attention is called, in Honorable Commissioner's letter of April 15th, 1901.

I have been unable to obtain the deposition or testimony, by cross-examination, of Frederick A. Kribs, for the reason that from the time I began the investigation, of this list of entries up to the present

time, he has been absent from the State of Oregon.

I desire to say further that I have no hopes that at a contest, if one should be ordered, in these cases, I would be able to procure any additional testimony than that herewith offered, in support of my contention that these entries were made in the interest of the said Frederick A. Kribs, and for speculative purposes. Believing as I do that the facts shown make a good *prima facie* case of fraud in connection with each of said entries, with the exception of that of Fred Wodtli, I recommend that each of said entries be held for cancellation, excepting that of Fred Wodtli, for the *reaso* that they and each of them were not made for the exclusive use and benefit of the entryman, but were made for speculative purposes, and for the benefit of the said Frederick A. Kribs.

[664]

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of RICHARD F. MALONE, to the N. W. ¼ of Sec. 22, Tp. 14 S. R. 4 E.

RICHARD F. MALONE, after being first duly sworn according to law, testifies as follows:

State your name, age, occupation and place of residence.

A. Richard F. Malone; age, 28 years; residence, Sweet Home, Linn Co., Or.; occupation, landlord.

Q. Are you the same person who made timber entry of the land above described?

A. Yes, sir.

Q. What led you to locate this land?

A. I thought I had a right to a timber claim, and I thought I would use my right.

Q. Who, if anyone, located you and selected the land? A. Mr. John Thompson.

Q. What, if anything, did you pay him for his services? A. Yes, I paid him $50.00

Q. Did you make an examination of this land before filing, and if so state the nature and extent of said examination.

A. I went over it, started in on one corner; I couldn't tell just what corner.

Q. How did you identify the land by its numbers as the land on which you afterwards filed?

A. I went by what Mr. Thompson told me that that was the piece of land I went over.

Q. Can you describe the land with reference to the character and quantity of timber, the number and course of the streams, and the other natural characteristics of the land? [665]

A. It is rough and hilly; and mostly it is pretty good timber. One stream which runs North.

Q. How much, if any, tillable land is there on the tract? A. None that I know of.

Q. What would be your estimate of the amount of timber per acre? A. 40 or 50,000.

Q. Do you own any land in Linn County?

A. Yes, a little town property.

Q. What did you intend to do with this land or the timber, when you made your filing on it.

A. I hadn't my mind made up what I would do with it yet.

Q. Had you any means of logging it or using the

timber yourself?

A. Well, I didn't know but what after a while I might.

Q. What disposition have you made of the land?

A. Sold it to Frederick A. Kribs for $850.00.

Q. What was the date of your final proof?

A. October the 9th.

Q. Did you give any mortgage on the land—if so to whom?

A. I give a mortgage to Mr. Kribs after I had proved up on the land.

Q. How much was that mortgage?

A. $700.00.

Q. How long was it to run?

A. I am not positive now, I think 6 months.

Q. Where and with whom was the first conversation had in regard to a sale of the land to Mr. Kribs?

A. Well, it was after I got home; I was in debt for the property I had bought in town, and we talked the matter over, and I thought if I could sell that and pay off what I owed, I would do so. I went to Mr. Mealey and asked him if he knew of anyone who would buy the land, and he spoke to Mr. Kribs.

Q. Did you ever see Mr. Kribs?

A. No, sir, I never saw him. **[666]**

Q. Who then, acted as the agent of Mr. Kribs in making you the loan of $700.00?

A. Well, when I was in Roseburg, I first saw the advertisement in the Brownsville papers of Mr. McKinley, and I run across Mr. Mealey and I spoke to him about seeing to get the money.

Q. Did he get it for you? A. Yes, sir.

Q. You got the money then from Mr. Mealey and turned the mortgage of Kribs over to him?

A. Yes, sir.

Q. Which one of the boys was it?

A. O. J. Mealey.

Q. That is the one, is it, that you afterwards made the sale of the land to? A. Yes, sir.

Q. What day did you reach home from Roseburg?

A. I don't remember the 12th or perhaps the 11th.

Q. How much money did Mr. Mealey deliver to you in payment of the land when you gave him the deed? A. $850.00.

Q. Why should he give you $850.00 for Mr. Kribs when you already owed Mr. Kribs $700.00?

A. $850.00 is what I was to get for my claim. He gave me $150.00 when I delivered the deed.

Q. Did Mr. Mealey or Mr. Kribs or anyone else suggest to you at the time you located the land or at any other time before you made your final proof that they would furnish you a buyer for the land after you had obtained the title? A. No, sir.

Q. Did you have any contract or agreement either expressed or implied with anyone prior to making your final proof to sell the land or any part thereof or any of the timber thereon to anyone **[667]** after you should obtain the title thereto?

A. No, sir; none.

Q. Is it true that when you went to the Land Office to prove up you did not have the money with which to pay for the land and did not know of whom you were to receive it?

A. Yes, I knew where I could get it if I didn't get

it at that place.

Q. Of whom did you expect to get it if you did not get it of Mr. Kribs? A. My father.

Q. Was he with you at Roseburg?

A. No, sir.

Q. Did you receive any other offer for the land than that made you by Mr. Mealey for Mr. Kribs?

A. No, sir, I didn't.

Q. You may state anything further which may occur to you as being proper and competent testimony in this investigation.

A. Nothing further.

RICHARD F. MALONE.

Subscribed and sworn to before me this 8th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Dated at Roseburg, Or., Dec. 28, 1901.

E. D. STRATFORD,
Special Agent, General Land Office. [668]

(ENDORSEMENTS):

15

23
—
396 U. S. LAND OFFICE. 21274
Received Feb.
5, 1902.
932 DEPARTMENT OF THE INTERIOR
Received Apr. 26, 1902.
E. D. STRATFORD,
Special Agent G. L. O.
Roseburg, Or. Dec. 28, 1901.

In the case of T. & S.
Entry No. 8510.

L. O. Roseburg, Ore.
Name: Richard F. Malone.
Tract N. W. 14. Sec. 22, Tp. 14 S. R. 4 E.
No. of Report: 108.
Date of office letter directing the investigation: April 15th, 1901.
Ack. Feby. 5, 1902.
5/28/02. Entry intact. G. R. O.
Filed May 10, 1910. G. H. Marsh, clerk. **[669]**

Affidavit of Louis Maynard in Government's Exhibit No. 8.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of LOUIS MAYNARD, to the W. ½ of SW. ¼, and the NE. ¼ of SW. ¼, NW. ¼ of the SE. ¼ of Sec. 22, Tp. 14, S. R. 4 E.

LOUIS MAYNARD, being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation, place of residence.

A. Louis Maynard; 42 years; wood-sawer (steam); residence, Albany, Linn Co., Oregon.

Q. Are you the same person who made a timber entry of the land above mentioned?

A. Yes, sir.

Q. What induced you to take up this timber land?

A. There was a big excitement about the timber, and I saw parties from Michigan and I thought it was a big thing.

Q. What did you expect at that time that you would do with the land or the timber after you had obtained the title to it?

A. I expected to log the timber off and sell it to some sawmill.

Q. Did you at that time or have you since then had the necessary facilities for logging the land?

A. No, sir, I have not.

Q. Who, if anyone, located you on the land or showed it to you? A. John Thompson.

Q. How much, if anything, did you pay him for his services? A. $50.00.

Q. Did you pay him before or after you made your final proof? A. I paid him before.

Q. Did you make a personal examination of the land before you filed [670] on it, and if so, state the extent of such examination?

A. I saw the land and saw the section corners, and it was all rough and heavy timber.

Q. How much, if any, tillable land is along the tract? A. I saw none, whatever.

Q. What would be your estimate of timber per acre on the land? A. Probably 50,000 ft.

Q. What disposition have you made of the land since you made your final proof?

A. I have sold it to Mr. Frederick A. Kribs for $850.00?

Q. Did you borrow the money or any part thereof with which you paid the Government for the land, and if so of whom?

A. I borrowed the money through Mr. O. J. Mealey of Frederick A. Kribs; the amount was $700.00.

Q. When did you borrow the money?

A. I borrowed the money at Roseburg the day I proved up, the 9th of October, 1900.

Q. When, where, and with whom did you have your first conversation in regard to the sale of the land to Mr. Kribs after you had completed your final proof? Give the substance of the conversation.

A. It was with Mr. O. J. Mealey, and I sold on account of all adjoining me was already sold at the time. I met Mr. O. J. Mealey at Sweet Home, some two or three days after I made my proof, and arranged through him to let Mr. Kribs have the land at the price paid him.

Q. Did you have any conversation with Mr. Kribs personally, in regard to either the loan by him or the sale of the land to him?

A. No, sir. Both transactions were through Mr. O. J. Mealey.

Q. Did you give a note, or mortgage on the land to Mr. Kribs to secure this land?

A. Yes, sir, I did give a mortgage. **[671]**

Q. Did your wife sign the note and mortgage?

A. I don't think she did.

Q. The money on both the loan and the sale was paid to you by Mr. O. J. Mealey, was it not?

A. Yes, sir.

Q. Did you have any agreement or understanding with Mr. Mealey, Mr. Thompson or any other person prior to making the final proof that you would convey this land or any part thereof, or any of the timber thereon to Mr. Kribs or any other person after you should have obtained the title there-

for? A. No, I did not.

Q. You may state anything further that may occur to you that is material or competent testimony in this investigation.

A. I know of nothing further.

LOUIS MAYNARD.

Subscribed and sworn to before me this 13 day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[672]**

Affidavit of J. O. Mickalson in Government's Exhibit No. 9.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of Joseph O. Mickalson to the W. ½ of the E. ½ of Sec. 10, Tp. 14, S. R. 3 E.

JOSEPH O. MICKALSON, being first duly sworn, according to law, testifies as follows:

Q. State your name, age, occupation and place of residence.

A. Joseph O. Mickalson; age, 35; residence, Sweet Home, Linn Co., Or.; occupation, shoemaker.

Q. What induced you to enter this land under the timber and stone act?

A. I knew I had a right to a timber claim and thought I would avail myself of the opportunity of securing one.

Q. Who, if anyone, located you on this land?

A. Mr. William Mealey.

Q. How far do you reside from the land?

A. I think about 18 miles.

Q. How did you go from your residence to the land in question?

A. I rode from Sweet Home to Mr. Mealey's place on horseback, and the rest of the way on foot.

Q. How far did you have to walk to reach the place?

A. About 8 miles, as near as I can estimate.

Q. To what extent did you examine the land?

A. I went across the land diagonally and examined it.

Q. How did you identify the land as to the numbers as the land on which you afterwards filed?

A. Mr. Mealey had a plot of land and he gave me the numbers, and I **[673]** secured the numbers myself from the Sec. corners and bearing trees.

Q. What did you intend to do with the land or the timber at the time you made the entry?

A. I intended to secure the land and wait for further developments of the country and make good use of my claim.

Q. What disposition have you made of the land?

A. I sold the land to Frederick A. Kribs for $840.00.

Q. On what day did you make your final proof?

A. The 27th day of August.

Q. On what day did you sell the land?

A. I sold the land the 28th day of Aug.

Q. Did you borrow any of the money with which you paid the Government for the land and the expense incident to the entry? If so state the amount and from whom borrowed.

A. I borrowed the money of $600.00 of Frederick A. Kribs.

Q. When did you borrow this money?

A. I borrowed it the 27th day of August.

Q. Did you have this transaction with Mr. Kribs personally or did some one act as his agent in making you the loan?

A. I had Mr. J. A. Thompson secure the loan from him for me.

Q. Did you make the sale to and with Mr. Kribs personally or did some one act as his agent in making the purchase of the land for you?

A. I had Mr. Thompson act as the agent in selling the land to him for me.

Q. Did you meet Mr. Kribs personally in negotiating either the mortgage or the sale?

A. No, sir.

Q. When and with whom did you have the first conversation in regard to a sale of the land after you had completed your final proof?

A. With Mr. Thompson, at Crawfordsville, on the 28th day of August. **[674]**

Q. Did you have any agreement or understanding either expressed or implied with anyone prior to making your final proof that you would sell the land to Mr. Kribs or any other person?

A. None whatever.

Q. Did you receive any other offer for the land than that made you by Mr. Thompson for Mr. Kribs as you have stated? A. No, sir.

Q. What caused you to look for a purchaser of the land the day after you had received your final

certificate?

A. I was greatly in need of the money to use elsewhere.

Q. You may state anything further that may occur to you as being proper and competent testimony in this investigation.

A. I did not know that Mr. Thompson was acting as agent for Mr. Kribs aside from my particular transaction, in borrowing the money and selling the land as above referred to.

JOS. O. MICKALSON.

Subscribed and sworn to before me this 7th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[675]**

Affidavit of Thomas Parker in Government's Exhibit No. 10.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Fraudulent Entry of THOMAS PARKER, to the N. ½ of NE. ¼, SE. ¼ of NE. ¼ and NE. ¼ of SE. ¼ of Sec. 11, Tp. 14, S. R. 3. E.

THOMAS PARKER, being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation and place of residence.

A. Thomas Parker; age, 55 years; Foster, Linn Co., Or.; occupation, farmer.

Q. Are you the same person who made a timber entry on the land above described?

A. Yes, sir.

Q. Who, if anyone, suggested to you the advisability of your taking this timber land?

A. No one at all.

Q. Who, if anyone, located you on the land.

A. Mr. Wm. Mealey located me.

Q. How much, if anything, did you pay him for his services? A. I paid him $50.00.

Q. Did you pay him before or after you made your final proof?

A. I paid him when he did the work.

Q. Did you make a thorough personal examination of the land before you filed on it?

A. Yes, sir.

Q. Who was with you when you examined the land? A. Mr. Mealey.

Q. What was the extent of your examination?

[676]

A. Well, I just walked over the land and looked at it, looked at the timber.

Q. How did you identify the land which you examined as being the land you afterwards filed on?

A. By the survey and witness trees and corner posts.

Q. What is your estimate of the amount of timber on this tract per acre?

A. I would judge from 40 to 50,000.

Q. What disposition have you made of the land since you obtained the title thereto.

A. I sold the land to Frederick A. Kribs.

Q. How much did you obtain for it?

A. $840.00.

Q. What was the date of your final proof?

A. I think it was long about the 26th of July, if I remember right.

Q. When did you sell the land?

A. I sold it the same day after I made the final proof.

Q. Where was the deed made out at Roseburg?

A. Yes, sir.

Q. Was it not the 26th or 27th of August you proved up instead of July?

A. Yes, yes, I believe it was; excuse me.

Q. What was your intention in regard to the use you would make of the land or the timber at the time you entered the land?

A. Well, I didn't know that I could make any particular use of it at the present time.

Q. Did you have any intention at that time of selling it on the day that you made your proof?

A. No, sir.

Q. How did you happen to make a sale of the land immediately after having made your final proof? **[677]**

A. I was talking with some men there on the street and this gentlemen came along and he wanted to know if I would sell my timber claim; he says, "I am buying timber claims," and I told him I didn't know, I might possibly sell it providing the price suited. And I went on and finished my conversation with the old gentlemen and I met him again on the street and he wanted to know what conclusion I had come to, and I asked him the question what he would give for the land. And he said

$840.00. I made the deal right there.

Q. Had you ever seen Mr. Kribs before that time?

A. No, sir; I had never met the gentlemen—never saw him before, that I know of.

Q. Did Mr. Mealey or anyone else have anything to do as agent or otherwise with making this sale?

A. No, sir.

Q. Did you borrow any of the money with which you paid the Government for this land or any of the expense incident to the entry? A. No, sir.

Q. Did you take the money with you from here to Roseburg at the time you proved up on the land? Or did you receive it there at Roseburg?

A. No, sir. *I taken* the money with me.

Q. Did you draw the money from some bank when you went to Roseburg, *is* if so from what bank?

A. No, sir; I didn't draw the money from a bank.

Q. From what particular source did you obtain the money with which you paid for this land?

A. I sold some stock and hogs.

Q. The deed for the land, then, was made out on the same day that you made your final proof and after you had completed your proof?

A. Yes, sir.

Q. How long was it after you had completed your proof and left the **[678]** Land Office before you had agreed with Mr. Kribs on the price he should pay you for the land?

A. Three or four hours.

Q. Have you ever seen Mr. Kribs since that time?

A. No, sir.

Q. How do you know that the gentlemen you had to deal with was Mr. Kribs himself?

A. He told me that was his name.

Q. Did you leave Roseburg on your return home on the same day that you made your final proof?

A. Yes, that night.

Q. Had you talked to anyone before meeting Mr. Kribs on the street as you have stated in regard to selling the land? A. No, sir.

Q. Do you own any other real estate in this part of the country? A. No, sir.

Q. You stated that you sold hogs to obtain the amount of money to pay the Government price of this land. Do you remember how much money you paid for the land? A. Yes, sir, $411.00.

Q. To whom did you sell hogs to the amount of $411.00?

A. Well, sir, I never asked the man's name. It was a Seattle man.

Q. Do you know where the man lives?

A. No, sir.

Q. How many hogs did you sell this man to receive $411.00 for them?

A. Well, there was 97 hogs altogether.

Q. Were the hogs driven from here to Lebanon and shipped from there? If not where were they taken to.

A. They were taken to Miller Station.

Q. Did you make any contract or agreement either expressed or **[679]** implied with Mr. Kribs or any other person prior to having made your final

proof to sell the land or any part thereof or any of the timber thereon to anyone after you should have obtained the title thereto? A. No, sir.

Q. You may state anything further which may occur to you as having a proper bearing on this investigation.

A. I had part of the money of my own, and I sold cattle and hogs which together amounted to the amount of $411.00; this is all I wish to state in regard to the matter.

his
THOMAS X PARKER.
mark.

Witnesses to mark:
J. VAN ZANTE.
WM. R. MEALEY.

Subscribed and sworn to before me this 11th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[680]**

Affidavit of Samuel D. Pickens in Government's Exhibit No. 11.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFICE.

In the Matter of the Fraudulent Entry of SAMUEL D. PICKENS to the W. ½ of the SW. ¼, SE. ¼ of the SW. ¼, the SW. ¼ of the SE. ¼ of Sec. 11, Tp. 1 S., R. 3 E.

SAMUEL D. PICKENS, being first duly sworn, according to law, testifies as follows:

Q. State your name, age, place of residence and occupation.

A. Samuel D. Pickens; age, 47 years; Foster, Linn Co., Oregon; farmer.

Q. How did you happen to make this timber entry?

A. Well, I wanted to take a timber claim; I got Wm. Mealey to locate me.

Q. Did Mr. Mealey or anyone else suggest to you that you enter this land? A. No, sir.

Q. What did you pay Mr. Mealey for his services? A. $50.00.

Q. Did you visit the land and examine it with Mr. Mealey before you had made your entry?

A. Yes, sir.

Q. How far do you live from the land?

A. About 7 or 8 miles.

Q. How thorough an examination did you make of the land? A. I went through it.

Q. How did you identify the land by numbers as being the land on which you afterwards filed.

A. By the surveyor line and the cornerstones.

[681]

Q. What did you mean by the surveyor's line?

A. Well, the line, the surveyor's line, that runs by the claim. I mean the blazes on the trees and the corner stakes.

Q. What is your estimate of the amount of timber per acre on this land?

A. About 30,000 or 40,000, as near as I can tell.

Q. What was your intention in regard to the use you would make of the land or the timber at the time you made the entry?

A. I didn't know, maybe I would want to log it off.

Q. Did you have the means to log this land?

A. No, sir.

Q. How, then, did you expect to log it yourself?

A. Well, I didn't know but that I might be able some day.

Q. What disposition have you made of the land since you obtained the title to it?

A. I sold it to Mr. Frederick A. Kribs.

Q. How much did you receive for it?

A. $840.00.

Q. When did you make your final proof on the land? *Q.* August the 27th, 1900.

Q. When did you sell the land?

A. September the 1st.

Q. How did you happen to sell the land so soon after you had obtained the title to it?

A. I needed the money for other purposes.

Q. Who first mentioned to you the question of selling the land? A. I think Mr. Kribs.

Q. Where at? A. Roseburg.

Q. That was on the same day that you made your final proof, was it not? **[682]** A. Yes, sir.

Q. How did the matter come up and what was said?

A. I had to borrow money on this claim. He was buying timber land. He wanted to buy it, and I sold it to him.

Q. Can't you remember any of the conversation in regard to the matter how a question of the sale came about?

A. He was buying timber at that time. Well, I

met him there at Roseburg on the street; he asked me if I had a timber claim. I told him I had. He asked me if I wanted to sell it, and I told him I did, and we agreed on the price.

Q. Was the deed made out then and there? If not, when and where?

A. No, sir; the deed was made out here at Foster.

Q. Why was it necessary for you to come home in order to make the deal?

A. To get my wife to sign.

Q. Who acted for Mr. Kribs in delivering the deed and paying for the land, if anyone?

A. Mr. O. J. Mealey.

Q. Was the money paid at Roseburg for the land or was it paid here? A. Paid here.

Q. Who did you borrow the money from to pay the Government for this land and other expenses?

A. Mr. Frederick A. Kribs.

Q. How much did you borrow?

A. $600.00.

Q. Did you have this transaction with Mr. Kribs personally or with someone acting for him?

A. With Mr. Kribs personally.

Q. When was this, on the day that you proved up? A. Yes, sir.

Q. How did you find out that Mr. Kribs had money to loan? **[683]**

A. I heard *heard* other men talking about his having money to loan.

Q. Did you know when you went to Roseburg to prove up that you was to get money from Mr. Kribs to pay for the land? A. No, sir.

Q. You did not have any money of your own when you went to Roseburg, and if you did not expect to get it of Mr. Kribs how did you expect to pay for the land?

A. Well, I didn't know whether I would get it of him or not; I took chances on it.

Q. Who, if anyone, introduced you to Mr. Kribs?

A. No one.

Q. Did you make the arrangement for the money to prove up on your land and for the sale of the land at the same time? A. No, sir.

Q. Both were on the same day, however, were they not? A. Yes, sir.

Q. How many hours was there between the two transactions? A. Probably 4 or 5.

Q. Then, as I understand you, at the time you borrowed the money of Mr. Kribs you had no intention of selling him the land? A. No, sir.

Q. A few hours afterwards you met him again, as I understand it, and made the agreement to sell him the land, did you? A. Yes, sir.

Q. Now, is it not a fact that you did not handle any of this $600.00 or of the $840.00 except the profit which came to you in the deal?

A. No, sir; I got the $600.00 and paid it out myself.

Q. How much money was paid you here at Foster at the time you delivered the deed?

A. I don't know just exactly. **[684]**

Q. Was it $840.00, or was it the difference between $840.00 and the amount you owed Mr. Kribs on the mortgage? A. $200.00 or $250.00.

Q. You may state anything further which may

occur to you as being proper and competent testimony in this investigation.

A. Have nothing further.

SAMUEL D. PICKENS.

Subscribed and sworn to before me this 7th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[685]**

Affidavit of J. W. Rozell in Government's Exhibit No. 12.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of J. W. ROZELL, to the N. ½ of SE. ¼ and N. ½ of SW. ¼ of Sec. 28, Tp. 14 S., R. 4 E.

J. W. ROZELL, being first duly sworn, according to law, testifies as follows:

Q. State your name, age, occupation, and place of residence.

A. J. W. Rozell; 52 years; mechanic; Albany, Linn Co., Or.

Q. Are you the same person who made a timber entry of the land above described? A. Yes, sir.

Q. Did you make a personal examination of the land before you filed on it? A. Yes, sir.

Q. Who, if anyone, located you on the land or showed you the land? A. Wm. Mealey.

Q. How did you happen to take this land?

A. Well, I considered it several times and thought about it and I saw Mr Mealey about it.

Q. How much, if anything, did you pay Mr.

Mealey for his services? A. $50.00.

Q. How did you identify the land as to its numbers as the land on which *you afterwards?*

A. I examined the land and was at the corners.

Q. You may describe the land with reference to its natural landmarks, the kind and extent of the timber, the streams, if any, and the marks, the kind and extent of the timber, the streams, if any, and [686] the direction in which they flow, and the other natural characteristics.

A. Heavy timber on the land; no land that could be cultivated; don't remember much about the streams.

Q. What was your intention to do with the land or the timber at the time you made your entry?

A. I expected to utilize the timber.

Q. How did you expect to utilize the timber?

A. By logging it off.

Q. Had you, then or have you since that time, had the facilities to log the land?

A. No, not to any great extent.

Q. What disposition have you made of the land since you proved up?

A. Sold it to Frederick A. Kribs, for $840.00.

Q. Did you borrow any money with which you paid the Government for the land? A. No, sir.

Q. When did you sell the land?

A. I don't remember the date.

Q. Do you remember the day on which you made final proof?

A. I think it was the 9th of October.

Q. It's a fact, is it not, that you sold the land and made the deed to Mr. Kribs on the same day on

which you made your final proof? A. Yes, sir.

Q. Why, if you had expected to log the land yourself, did you sell it on the same day on which you made your final proof?

A. I was convinced that it was the best thing to do. I knew that some of the others had sold.

Q. Where or of whom did you obtain the money with which you paid for the land?

A. Well, it was money I had collected at different times that I had saved. **[687]**

Q. When, where and with whom did you have the first conversation in regard to a sale of the land after you had completed your final proof? State the conversation or the substance thereof as fully as you can.

A. I heard some other parties speak of selling, and thinking of the matter I consulted the Mealey Bros.—Wm. Mealey and O. J. Mealey. There was not much conversation; they told me where I could dispose of it at the time.

Q. Did you make the sale to Mr. Kribs personally, or did someone act for him in arranging for the sale and the terms?

A. It was with Mr. O. J. Mealey.

Q. Did you have any conversation with Mr. Kribs about the matter, yourself? A. I did not.

Q. Who paid you the money for the land?

A. Mr. O. J. Mealey.

Q. Was the money paid you in cash or by check on a bank? A. In cash.

Q. When and where?

A. At Roseburg, Oregon, on the day I made final proof, the 9th of Oct., 1900.

Q. Did you have any contract or agreement either

expressed or implied with Mr. Mealey, Mr. Kribs or any other person, prior to your having made your final proof, to sell or dispose of the land or any part thereof, or any of the timber thereon, to anyone after you should have obtained the title thereto?

A. Not previous to proving up.

Q. Did you at the time you made this entry, or do you now own any real estate? A. No. **[688]**

You may state anything further which may occur to you as being proper and competent testimony in this investigation. A. Nothing more.

J. W. ROZELL.

Subscribed and sworn to before me this 13th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[689]**

Affidavit of Sidney Scanlan, in Government's Exhibit No. 13.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of SIDNEY SCANLAN, to the W. ½ of the NE. ¼ and NE. ¼ of the NE. ¼ of Sec. 28, and the NW. ¼ of the NW. ¼ of Sec. 27, Tp. 14 S., R. 4 E.

SIDNEY SCANLAN, being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation and residence.

A. Sidney H. Scanlan; rancher, in vicinity of Foster; 39 years.

Q. Are you the same person who made a timber entry on the land above described? A. I am.

Q. Who, if anyone, suggested to you the advisability of your taking a timber claim?

A. No one.

Q. Who, if anyone, located you or selected the land for you? A. Wm. Mealey.

Q. How did you happen to get him to locate you?

A. Knowing he had been living in the country a good while and knowing that he helped survey that portion of the country, I asked him if he would locate me on a quarter section of timber.

Q. How much, if anything, did you pay him for his services? A. $50.00?

Q. When did you pay him that amount?

A. When I made the entry.

Q. Had you ever been on this land or in the immediate vicinity of it before you was shown the land by Mr. Mealey?

A. Not on the land exactly, but in probably three miles of it before he showed it to me. **[690]**

Q. How far do you reside from the land in question? And how long have you lived there?

A. I should judge it is about 12 miles, lived in my present residence two years.

Q. How thoroughly did you examine the land at the time you went with Mr. Mealey to locate it.

A. I put in some two or three hours looking over the quarter section.

Q. How did you identify the land which you examined as the land on which you afterwards filed?

A. By the Sec. corner, the bearing trees, the inscriptions thereon.

Q. You may describe the land.

A. It is the head of what is known as Canyon Creek; the land slopes and drains to the north, very mountainous and rough. There is no tillable land on it at all; as a rough estimate I should judge there is from 50 to 60,000 ft. of saw-timber to the acre.

Q. Did you make this estimate yourself from your own experience as a woodman? A. I did.

Q. What disposition have you made of the land since you made your final proof?

A. I sold it to F. A. Kribs.

Q. When did you make your final proof?

A. Oct. 9th, 1900.

Q. When did you sell the land?

A. On the same day, Oct. 9th.

Q. How did it happen that you sold the land so soon after having made your final proof?

A. A gentlemen met me on the street and asked me if I had been making proof on a timber claim; I told him I had. He asked me if I would sell it and I told him providing I could make more out of it by selling it than handling the timber myself. And he offered me $850.00 for it, and thinking that was more than I could realize out of it at the present time, I took him up at his offer. **[691]**

Q. Who was the gentleman you refer to?

A. I couldn't say. I didn't ask the man his name.

Q. Was it the man that you sold to?

A. I don't know whether it was him or his agent; I couldn't say.

Q. Do you know Frederick A. Kribs?

A. Not personally; I don't know that I ever saw the man.

Q. Where did you go to make the papers out?

A. I don't recollect now; it was some lawyer or N. P., but what his name was I don't remember.

Q. Is it not a fact that the same man who made out your final proof papers also made the deed to the land and that the papers were all made out at the same time and in the same office?

A. They were not.

Q. Did not the same man who made your final proof papers make the deed for the land?

A. He did not.

Q. Who made your final proof papers?

A. I forgotten the man's name. It was made out in the land office in Roseburg, by the officers.

Q. In what part of the town or what building was the deed made out?

A. I don't know what the building was, it was about 3 or 4 blocks from the Land Office.

Q. How long was it after you left the Land Office after making your proof before you met this man and made the agreement to sell the land?

A. About two hours, I should judge.

Q. Is it not a fact that after the Land Office opened at 9 o'clock on the morning of the 9th of October, you made your final proof, made a deed to the land, received your pay for it and left the town on the train which goes north about 11 o'clock in the forenoon of the same day? A. No, sir.

Q. Who, if anyone, furnished you with the money or any part thereof **[692]** with which you paid the Government for this land and the expense incident to this entry? A. No one.

Q. Did you take the money with you to Roseburg to pay for this land when you went there?

A. I did.

Q. Did you have any agreement or understanding either expressed or implied with Mr. Mealey, Mr. Kribs or anyone else prior to your having made final proof to sell or dispose of this land or any part thereof or any of the timber thereon to anyone.

A. I did not.

Q. Was the money for the land paid you in cash or by a check? A. Paid in cash.

Q. How much cash was actually passed to you at the time the sale was consummated?

A. $850.00.

Q. Do you own any real estate in the neighborhood in which you live or in which this land is situated?

A. I have a Homestead Entry but not proven up on yet.

Q. Do you live on the Homestead? A. I do.

Q. Have you ever give a mortgage on your timber claim, if so, to whom? A. I gave none.

Q. You may state anything further which may occur to you as being relative and proper testimony in this investigation.

A. Why, I think the ground is all covered.

SYDNEY H. SCANLAND.

Subscribed and sworn to before me this 11th day of November, 1901.

E. D. STRATFORD,
Special Agent, G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [693]

Affidavit of J. H. Steingrandt in Government's Exhibit No. 14.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JOSEPH H. STEINGRANDT to the E. ½ of the E. ½ of Sec. 10, Tp. 14, S. R. 3 E.

JOSEPH H. STEINGRANDT, after being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation and place of residence.

A. Joseph H. Steingrandt; age, 32; ranchman; Foster, Linn Co., Or.

Q. Are you the same party who made a timber entry of the land above described?

A. Yes, sir.

Q. How far do you live from this land?

A. About 12 or 13 miles.

Q. Did you make a personal examination of this land before you filed on it? A. Yes, sir.

Q. State the extent of such examination.

A. I was over the land and seen the corners.

Q. You may describe this land having reference to the amount and quality of the timber thereon, the streams, ravines, and other natural characteristics of the land.

A. Quality of the timber was fir; as far as any tillable land, none; no streams that I know of, very small streams, if any; mountainous;

Q. Who, if anyone, located you on this land or showed it to you? A. Mr. Wm. Mealey.

Q. How much, if anything, did you pay him for his service? A. $50.00.

Q. What was the inducement that caused you to take this land at this time?

A. I thought I might be apt to sell it sometime.

[694]

Q. Did you have any facilities for using the timber yourself? A. Yes, sir.

Q. Did you then or do you now own any other real estate?

A. No, sir. Have a homestead not proved up.

Q. What disposition have you made of the land since you obtained your final certificate?

A. Sold it to F. A. Kribs for $840.00.

Q. When did you make your final proof?

A. August the 27th, 1900.

Q. Do you know Mr. Kribs personally?

A. I got acquainted with him while I was in Roseburg at the time I filed on the timber claim.

Q. Did you have any talk with him at that time about the timber land business? A. No, sir.

Q. Did you have any agreement or understanding with him or with any other person at that time that you would sell him the land or the timber thereon as soon as you should obtain title therefor?

A. No, sir.

Q. When, where and with whom did you have the first conversation relative to a sale of this land after you had completed your final proof and left the Land Office?

A. With Mr. John Thompson at Roseburg after proving up the same day.

Q. Give as nearly as you can the substance of that conversation.

A. Well, in the first place, timber was selling out then and I thought while I could dispose of this land I would just as well sell it. Mr. John Thompson told me that Mr. Kribs was buying land and he told me that I had better sell at that time.

Q. Did you meet Mr. Kribs there then and make the sale with him personally, or did Mr. Thompson arrange the sale for you?

A. I seen Mr. Kribs personally. **[695]**

Q. Did you agree on the price which you was to receive and that Mr. Kribs was to have the land?

A. Yes, sir.

Q. Was the deed made out then?

A. No, sir.

Q. When and where was the deed made?

A. The deed was made out at my own home on Sept. 1st, 1900.

Q. Did you borrow any of the money with which you paid the Government for this land? If so, how much and to whom? A. $600.00 of Mr. Kribs.

Q. When did your borrow this money and how was it secured?

A. After I proved up, secured it by mortgage on the land.

Q. Did your wife sign the mortgage?

A. No, sir.

Q. Where was the money paid you for the land and by whom?

A. It was paid here at my home by Mr. Wm. Mealey.

Q. How much money was paid you by Mr. Mealey?

A. $240.00, being the balance over the $600.00 which was due on the mortgage.

Q. You may state anything further which may occur to you as being proper and competent testimony in this investigation.

A. Nothing else.

J. H. STEINGRANDT.

Subscribed and sworn to before me this 8th, day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[696]**

Affidavit of C. N. Tuthill in Government's Exhibit No. 15.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of CORNELIUS N. TUTHILL, to the S. ½ of the SE. ¼ and Lots 3 and 4 of Sec. 18, Tp. 14, S. R. 4 E.

CORNELIUS N. TUTHILL, being first duly sworn, according to the law, testifies as follows:

Q. State your name, age, occupation and place of residence.

A. Cornelius N. Tuthill; age, 59; residence, Foster, Linn Co., Or.; occupation, farmer.

Q. What induced you to make a timber entry of this land?

A. I thought I had that privilege and would take

advantage of it.

Q. What did you expect to do with the land when you entered it?

A. I expected to use it some future time.

Q. Who, if anyone, located you on the land?

A. Mr. O. J. Mealey.

Q. What, if anything, did you pay him for his services? A. $50.00.

Q. Did you make a personal examination of the land before you filed on it?

A. Yes, I went all over it.

Q. How far do you live from this land?

A. I think about 10 miles.

Q. How did you ascertain the numbers of the land that you filed on?

A. I see the cornerstone.

Q. What have you done with the land since your proved up on it?

A. I borrowed some money $300.00, and I made final proof and had a chance to sell it. After I went up there I needed the money **[697]** to pay for the land. I sold the land to F. A. Kribs for $850.00.

Q. When did you make your final proof?

A. The 9th of October, 1900.

Q. When did you sell the land?

A. I sold it right away, the same day.

Q. How did you happen to sell the land at that time?

A. I saw I had an opportunity; I had made no contract to sell it with no one.

Q. Did you have the transaction of the sale with

Mr. Kribs personally or with someone else who represented him? A. Through Mr. Mealey.

Q. What was said between you and Mr. Mealey in regard to the sale after you had completed your final proof and left the Land Office?

A. There was nothing said about it that I can remember, in particular. I had heard that Mr. Mealey had something to do with buying land or something of that kind, and I went and asked him about it.

Q. Where did you borrow the money of Mr. Mealey? A. Here, at the home of Mr. Mealey.

Q. Where did you get the other part of the money?

A. By working out and saving it like others do. I work out every season.

Q. Did you receive any other offer for the land than that made you by Mr. Mealey for Mr. Kribs?

A. That was the only offer I had.

Q. Is there any tillable land on this tract?

A. Not very much.

Q. What is your estimate of the amount of timber per acre on the land?

A. It is pretty good timber. Perhaps 40 or 50,000.

Q. Did you have any agreement or understanding with Mr. Mealey as to what you should do with the land? **[698]**

A. No agreement.

Q. You may state anything further that you may desire in regard to this transaction.

A. That is all.

CORNELIUS N. TUTHILL.

Subscribed and sworn to before me this 8th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[699]**

Affidavit of R. C. Watkinds in Government's Exhibit No. 16.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of R. C. WATKINDS, to the W. ½ of the NE. ¼ and the SE. ¼ of the NE. ¼ and the NE. ¼ of the SE. ¼ of Sec. 22, Tp. 14, S. R. 4 E.

R. C. WATKINDS, being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation, place of residence.

A. My name is R. C. Watkinds; about 44 years; residence, Foster, Linn Co., Or.; occupation, merchant.

Q. Are you the same person who made final proof on the land above described? A. Yes, sir.

Q. Who, if anyone, first spoke to you in regard to the advisability of taking up this land?

A. Nobody.

Q. Who, if anyone, located you or selected the land for you? A. John A. Thompson.

Q. How much, if anything, did you pay him for his services? A. I paid him $50.00.

Q. When did you pay him with reference to the time you proved up?

A. Why I paid him before; I couldn't tell just what date exactly.

Q. How far do you reside from this land?

A. In the neighborhood of 12 or 14 miles.

Q. Had you ever been on this land prior to the time you examined the land with Mr. Thompson?

A. Well, I don't know that I was, but I rather think I have been.

Q. State the extent or thoroughness of your examination of the land **[700]** at the time you were on it with Mr. Thompson.

A. Well, we went to the corner of it and I suppose were all over it.

Q. How did you identify the land on which you filed as being the land which you examined at that time?

A. Well, by the corner that we went to and by Mr. Thompson's word. He told me that that was the corner to Sec. 22.

Q. What disposition have you made of the land since you proved up?

A. Well, since I proved up I sold it to Fred A. Kribs.

Q. How much did you receive for it?

A. I received $850.00 for it, all told.

Q. What do you mean by all told?

A. Well, I mean that is what I received for it.

Q. On what day did you make your final proof?

A. I believe it was about the 9th of October; somewhere between the 1st and the middle.

Q. When did you sell the land?

A. It was about the 18th, I believe exactly.

Q. What was your intention at the time you made your entry of this land in regard to the disposition or use that you would make of it or the timber?

A. Why, I calculated to hold it until timber got higher and then sell it.

Q. What caused you to change your plans and sell the land so soon after you had obtained title thereto?

A. Bills becoming due with the wholesale men in Portland and elsewhere.

Q. Did you borrow any of the money with which you paid the Government for this land and the expense incident to the entry? And if so of whom?

A. No, I paid my own.

Q. Did you make the sale directly with Mr. Kribs or did someone act as **[701]** his agent in the transaction?

A. I sold *to* the land to Mr. Kribs throuhg Mr. O. J. Mealey.

Q. When was the subject of a sale of the land to Kribs first mentioned, where and by whom?

A. Well, I couldn't tell you exactly the date; it was right close to the day I sold it.

Q. How did the matter come about?

A. Why, I saw I was getting in a close place for money and I had it to raise and I knew that Mr. Mealey was buying land. I proposed to sell out to him.

Q. Was that here at Foster after you returned from Roseburg? A. Yes, sir.

Q. Did you have any contract or agreement either

expressed or implied with Mr. Mealey, Mr. Kribs, or anyone else, prior to your having entered the land to sell the land or any part thereof or any of the timber thereon to anyone? A. No.

Q. You may state anything further which occurs to you as being competent and relative testimony in this investigation.

A. I can't think of anything that would be of any benefit.

R. C. WATKINDS.

Subscribed and sworn to before me this 9th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[702]**

Affidavit of Charles Wiley in Government's Exhibit No. 17.

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of CHARLES WILEY to the W.½ of W. ½ of Sec. 12, Tp. 14, S. R. 3 E.

CHARLES WILEY, after being first duly sworn, according to law, testifies as follows:

Q. State your name, age, occupation, and place of residence.

A. Chas. Wiley; age, 23; farmer; Foster, Linn Co., Or.

Q. Are you the same party who made the timber entry of the land above described? A. I am.

Q. How far do you live from this land?

A. About 12 miles.

Q. Did you make an examination of the land before you filed on it? A. Yes, sir.

Q. Who was with you at that time?

A. Wm. Mealey and Geo. Pickens, Joe Steingrandt.

Q. Who, if anyone, located you or selected the land for you? A. Wm. Mealey was the locator.

Q. How much, if anything, did you pay him for his service? *Q.* $50.00.

Q. How did you know that you filed on the identical land which you examined?

A. I was over the land and saw the Sec. corners.

Q. What use did you intend to make of the land or the timber at the time you made the entry?

A. I took it for the benefit *of* the timber might be.

[703]

Q. What use did you expect to make of the timber?

A. I expected to log it off some day and sell it.

Q. What did you do with the land after you had obtained the title to it?

A. I sold it to Frederick A. Kribs for $840.00.

Q. What was the date of your final proof?

A. Aug. 27, 1900.

Q. When did you sell the land?

A. The same day I proved up.

Q. Why, if you had intended to log the timber off the land, did you sell it the same day that you obtained the title to it?

A. The timber land was sold adjoining and I got a chance to sell out and I thought it would be best to sell.

Q. Do you know Mr. Kribs personally?

A. I got acquainted with him there at Roseburg.

Q. Did you borrow any of the money with which you paid for the land and the expense incident to the entry, and if so from whom did you borrow it?

A. I borrowed $340.00 from John Thompson.

Q. Did you give a note or mortgage on the land to secure the amount? A. No.

Q. When did you borrow that money?

A. Just before I went to Roseburg.

Q. Did you receive all of the $340.00 from Mr. Thompson before you left your home to go to Roseburg? A. Yes, sir.

Q. Is it not a fact that the money was given you by Mr. Thompson at Roseburg just before you went to the Land Office? A. No, sir.

Q. When and where did you repay this money to Mr. Thompson? A. I repaid it here at Foster.

[704]

Q. When and where and with whom did you have the first conversation with anyone in regard to selling your land after you had completed your final proof and left the Land Office?

A. It was at Roseburg with the Mealey Bros. and Mr. Thompson, also Mr. Kribs, the same day that proof was made.

Q. State that conversation as nearly as you can remember it.

A. I was introduced to Mr. Kribs and he was buying land, and he talked it over with the boys and he asked me if I wanted to sell, and I asked him what he was paying for land; he said he was paying as high as $840.00 for timber claims. I told him if he would give me $840.00 he could have my claim. We talked

it over and made out the deed and sold it off.

Q. Who gave you the money for the land?

A. Mr. Kribs.

Q. How was the money paid—by cash or by check on a bank? *Q.* It was paid in cash.

Q. Was the amount which you had borrowed from Mr. Thompson deducted from the $840.00 or was the full amount paid you in cash?

A. The full amount was paid in cash.

Q. Why did you not pay Mr. Thompson the money that was due him there at that time?

A. Mr. Thompson was a neighbor of mine and he was not particular about it being paid right there, so we let it go until we came home.

Q. What business was Mr. Thompson engaged in at that time? A. He was locating.

Q. You may describe this land having reference to the amount and kind of timber thereon, the number and course of the streams, the amount of tillable land, if any, and the other natural characteristics.

A. It is mountainous, heavy timber land; as to the amount of timber I couldn't say; there was no tillable land at all; I couldn't say; **[705]** there was no tillable land at all; I believe two streams.

Q. Did you have any understanding or agreement with Mr. Thompson or the Mealey boys or anyone else in regard to what disposition you was to make of the land at the time you filed on it or made the final proof? A. No, sir.

Q. Did you receive any other offer for the land than that made you by Mr. Kribs?

A. No, sir.

Q. Who first suggested to you that it would be a

good investment for you to take up a timber claim?

A. There was quite an excitement at the time about taking timber claims and I thought I would take one. No one especially.

Q. Do you own now or did you at the time you made this entry own any real estate other than this timber land? A. No, sir.

Q. You may state what personal property, if any, you owned at the time you made this entry.

A. I had a team and wagon, a few head of cattle; I had a growing crop on rented land at the time.

Q. You may state anything further which may occur to you as proper relevant testimony in this examination.

A. I have nothing else to say, except that this transaction between Thompson and myself was a private transaction between us.

CHARLIE WILEY.

Subscribed and sworn to before me this 9th day of November, 1901.

E. D. STRATFORD,
Special Agent for G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [706]

Affidavit of John A. Thompson in Government's Exhibit No. 18.

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JOHN A. THOMPSON, of the NE. ¼ of Sec. 26, Tp. 14, S. R. 2 E.

JOHN A. THOMPSON, being first duly sworn, testifies as follows:

Q. State your name, age, residence and occupation.

A. J. A. Thompson; 47 years; farmer; Foster, Linn County.

Q. Are you the same person who made a timber entry on the land above described? A. Yes.

Q. Who, if anyone, suggested to you the advisability of taking up this land? A. No one.

Q. How did you come to take it up?

A. Well, I knew I had a right to take it up and I wanted the benefit of it if I could get it.

Q. What disposition have you made of the land since you entered it?

A. I sold it to F. A. Kribs.

Q. How much did you receive for it?

A. $840.00.

Q. When did you sell the land?

A. I think the 18th of August.

Q. How long was that after you made your final proof?

A. I think it was two days; I proved up on it the 16th.

Q. How did it happen that you sold the land so soon as you obtained title thereto?

A. I had an opportunity to sell and I thought it was the best I could ever get for it. **[707]**

Q. When and where did you first have a conversation with Mr. Kribs relative to a sale of this land to him?

A. I think it was the afternoon after I proved up or the next morning; I don't know which. About the 16th.

Q. State the substance of this conversation as

near as you can.

A. Something was said in regard to its being proved up, and if I wanted to dispose of my land. Well, I asked him how much he would give me for it and he told me. I told him that I would take it. I said Mr. Wodtli, Mr. Mealey and myself all took together and I said I would sell if the other boys would. I talked to Mr. Mealey and Mr. Wodtli said he wouldn't sell, and so we come to the conclusion that we would sell—that is, me and Mr. Mealey.

Q. Were the papers made out there at that time or were they made out afterwards?

A. They were not; they were made out after I came home.

Q. Did you give a mortgage on the land at any time? A. No, sir.

Q. Who, if anyone, loaned or furnished you any of the money with which you paid the Government price for this land the other expense incident to the entry?

A. No one. I furnished my own money.

Q. How far do you live from this land?

A. About four miles; I think three and a half or four miles.

Q. How long have you lived there?

A. I have lived there about 15 years.

Q. How well was you acquainted with this land if at all prior to having filed on it?

A. I knew all about it; been over it lots of times; knew every bit of it.

Q. Did you have any contract or agreement either expressed or implied with Mr. Kribs or any other

person prior to having made your final proof to sell said land or any part thereof or any of the timber thereon **[708]** to anyone after you should have obtained the title thereto? A. I did not.

Q. Are you a practical woodsman? Are you conversant with the timber so as to be able to estimate the timber on a tract of land? A. I think I am.

Q. What is your estimate of the amount of timber on this tract?

A. I think I estimated it at 50,000 to the acre.

Q. You may describe this land.

A. It's on the S. hill slope, on the N. side of Big Rock Creek. There is not two acres of level land on it that is level enough to cultivate as near as I can judge, in one place, I mean.

Q. What was your intention in regard to the disposition you would make of this land at the time you filed on it?

A. Why, I calculated to keep it, until I thought there was going to be a R. R. here when I took it. I just wanted a piece of land and thought it would be either a benefit to me or my family.

Q. You may state what property you have where you live.

A. I have 120 acres of land in the Tp. and an interest in 160 acres of land.

Q. How did Mr. Kribs pay you for this land—in cash or by a check on a bank?

A. He gave me one or two checks for it.

Q. Was the check or checks given to you at Roseburg at the time you had a conversation above referred to or was it sent to you afterwards?

A. It was not give to me there. Well, after I

made out the papers then he gave me a check or checks.

Q. What was the amount of the check or checks?

A. I know the amount was paid but don't remember whether it was paid in one check or two checks.

Q. You may state anything further which may occur to you as being competent and proper testimony in this investigation. **[709]**

A. Well, I told no one that I intended taking this claim until I was ready to take it. I located myself; and Mr. Wodtli and Mr. Mealey were with me.

J. A. THOMPSON.

Subscribed and sworn to before me this 9th day of November, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[710]**

Affidavit of O. J. Mealey in Government's Exhibit No. 19.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of O. J. MEALEY, of the SW. ¼ of Sec. 26, Tp. 14, S. R. 2 E.

O. J. MEALEY, being first duly sworn, according to law, deposes and says:

Q. State your name, age, occupation and place of residence.

A. O. J. Mealey; occupation, ranchman; farmer; I live near Foster; age 34; Foster, Linn County, Oregon.

Q. Are you the same party who made a timber entry for the land above described? A. I am.

Q. At whose suggestion, if anyone, did you enter this land?

A. No one; my own intention to secure a good piece of timber land.

Q. How far do you live from this land?

A. About three miles.

Q. Were you well acquainted with this land before you made your application? A. Yes.

Q. You may describe this land by its smaller subdivisions having reference to the nature and quality of the land, amount of timber thereon as to whether it is hilly or smooth, the number and course of the streams, the direction in which it floats, and the other natural characteristics, describe it fully.

A. Well, I should say that the timber is about 4,000 per acre, and it's on the Big Rock Creek, it goes west there, and the country is mountainous. The SW. ¼ of Sec. 26. **[711]**

Q. Who, if anyone, furnished you with money to pay for this land, or the expense incident of said entry? A. No one.

Q. What disposition, if any, have you made of this land, since you proved up on this land?

A. Sold it to F. A. Kribs.

Q. How long was it after you made your final proof that you sold the land?

A. I think it was about two days; proved up on it the 16th of August and sold it on the 18th, 1900.

Q. Why did you sell the land so soon after you had obtained title thereto?

A. Well, I thought I got what the land is worth,

and found a place where I could use the money to a better advantage.

Q. Did you have the transaction with Mr. Kribs personally or did someone act as his agent in purchasing the land for you?

A. I had transaction personally with Mr. Kribs.

Q. When and where was the first conversation had with Mr. Kribs relative to sale of the land to him?

A. I seen Mr. Kribs at Roseburg after proving up.

Q. The same day?

A. Yes, after I proved up.

Q. Give the substance of that first conversation.

A. Well, he said, "I see that you boys have been proving up in that territory"; that he had already purchased some claims, so I understood, and he asked us if we desired to dispose of our land, and I told him yes, sir, that I did. Then, of course—well, he says, of course I couldn't sell until I had come home and seen my wife; then I came home and sold, and he sent a check for the same.

Q. What did you receive for the land?

A. $840.00. **[712]**

Q. You may state whether or not you had any agreement or understanding with Mr. Kribs, either expressed or implied, before you proved up on your land that you would transfer the same or any part thereof or any of the timber thereon to him after you should have obtained the title thereto?

A. I had not.

Q. How long had you been acquainted with Mr. Kribs prior to selling him this land?

A. I seen the gentlemen up here before that; I don't know how long—in May, I think, or June; about a month or two before.

Q. It's a fact, is it not, that he stayed at your house for some time while he was examining land in the neighborhood of the land which you afterwards located?

A. Yes, yes, yes; he stayed at our place.

Q. Was there anything said between you and him while he was at your place or at any other time in regard to your taking up a timber claim and his purchase thereof after you should have obtained title thereto?

A. No; I did not even know his business up there, at the time he was there I didn't; that's a fact.

Q. What was your intention to do with this land at the time you entered it?

A. To hold it indefinitely; I expected to sell the logs off of it.

Q. Are you a practical woodman?

A. I ought to be; I've been raised here. I say I am.

Q. Have you acted as a locater of parties on timber lands in this vicinity? A. Yes, sir.

Q. State what, if anything, you had to do with locating Andrew Wiley, Cornelius M. Tuttle.

A. Well, I took them back and showed them the land. **[713]**

Q. State, if you know, whether or not these two parties who you claim you located were shown the identical land on which they afterward filed.

A. Yes. They seen the land.

Q. How did you identify the land as the land on

which they afterwards filed?

A. By the corner posts and bearing trees.

Q. Did you ever give a mortgage on the land that you entered? A. No, sir.

Q. What, if any, land do you own in the vicinity of the land you entered?

A. Only an interest in Sec. 4; that is, that's a part of my property, Sec. 4, R. 2. I've got a small interest there. Half interest in 40 acres.

Q. You may state anything further which may occur to you as having a proper connection with this transaction.

A. Of, well, it was taken in good faith. I believe I've covered the ground pretty well; although I took a timber claim up, after due consideration I thought it might be years before I would have an opportunity to sell the logs. I was also afraid of timber fires. I believe that's all.

O. J. MEALEY.

Subscribed and sworn to before me this 9th day of November, 1901.

E. D. STRATFORD,
Special Agent, G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [714]

Government's Exhibit No. 74.

CASE 3320.

KRIB4' BANK ACCOUNT NO. 1.

ROSEBURG.

Deposits. 1900.						Checks. 1900.			
Apr.	17.	$30,000.00	July	9.	21.60	Sep.	11.	$ 17.50	
"	30.	5,000.00	"	10.	500.00	"	12.	10.00	
May	11.	40,000.00	"	"	952.00	"	15.	1,341.56	
"	15.	20,000.00	"	11.	142.65	"	"	288.00	
"	23.	20,000.00	"	12.	55.50	"	17.	12.00	
July	11.	10,000.00	"	"	35.00 b	"	"	75.00	
"	14.	100.00	"	14.	50.00	"	18.	4.50	
"	24.	30,000.00	"	21.	20.00	"	20.	261.50	
Aug.	21.	15,000.00	"	21.	50.00	"	"	1,894.40	
Sep.	11.	17,000.00	"	"	100.00	"	"	10.00	
"	21.	5,000.00	"	"	1500.00	"	"	458.50	
Oct.	8.	7,000.00	"	23.	150.00	"	"	1,500.00	
Dec.	13.	10,000.00	"	24.	6.70	"	"	1,000.00	
			"	"	200.00	"	"	539.30	
			"	"	25.00	"	"	63.20	
Checks. 1900.			Aug.	3.	25.00	"	"	150.00	
			"	4.	500.00	"	21.	250.00	
Apr.	20.	$7,200.00	"	"	161.65	"	"	247.20	
"	"	410.75	"	6.	25.00	"	"	250.00	
"	25.	200.00	"	"	300.00	"	"	125.00	
"	26.	7,349.25	"	7.	50.00	"	"	42.50	
"	27.	25.00	"	9.	11.00	"	24.	*1,690.00*	
"	"	11,062.72	"	10.	75.00	"	25.	333.34	
"	28.	1,000.00	"	11.	29.15	"	"	542.53	
"	30.	3,840.00	"	13.	8.50	"	"	542.53	
May	3.	1.00	"	14.	20.00	"	"	333.33	
May	7.	20.00	"	15.	17,000.00	"	27.	333.33	
"	"	1.00	"	16.	200.00	Oct.	9.	130.00	
"	11.	3,500.00	"	"	389.44	"	"	260.00	
"	16.	1,000.00	"	"	8.80	"	"	542.33	
"	17.	5,962.60	"	17.	1,642.04	"	10.	4,155.68	L. Office
"	23.	28,314.40	"	27.	1,500.00	"	12.	34.00	
"	"	112.90	"	28.	329.51	"	"	22.50	
"	"	9,000.00	"	29.	100.00	"	17.	410.61	
June	5.	8,880.00	"	"	10.00	"	19.	3.00	
"	"	125.00	"	"	420.00	"	20.	15.00	
"	6.	100.00	"	"	1,000.00	"	23.	200.00	McM
"	7.	1.00	"	30.	100.00	"	27.	1.00	
"	9.	125.00	"	"	1,249.45	Nov.	2.	20.00	
"	13.	993.50	"	"	269.50	"	7.	2.00	
"	14.	250.00	"	31.	200.00	"	9.	50.00	
"	"	17.30	"	"	6.50	"	11.	300.00	
"	"	160.00	Sep.	1.	1.00	"	22.	1.50	
"	16.	3.00	"	"	3,696.46	Dec.	8.	100.00	
"	19.	33.50	"	4.	5.50	"	10.	200.00	L W
"	"	8,500.00	"	"	429.52	"	"	75.00	
"	29.	100.00	"	5.	16.30	"	11.	485.21	
July	2.	100.00	"	6.	329.49	"	"	375.00	
"	3.	100.00	"	"	5.00	"	12.	2.70	
"	7.	50.00	"	"	6.00	"	13.	250.00	
"	9.	200.00	"	10.	5.00	"	"	25.00	
"	"	75.00	"	11.	16,968.00	"	"	38.00	
"	"	39.00	"			"	"	125.00	

CASE 3320.

KRIBS' BANK ACCOUNT NO. 1 & 2.

ROSEBURG, OREGON.

2

Checks.
1900.

Dec.	13.	$638.00
"	"	940.00
"	"	76.00
"	"	8.25
"	"	940.82
"	"	76.00
"	"	8.25
"	"	940.82
"	14.	436.79
"	" "	850.00
"	17.	7.50
"	"	175.00
"	"	350.00
"	"	219.35
"	18.	30.00
"	19.	50.00
"	"	50.00
"	20.	100.00
"	21.	442.20
"	"	150.00
"	28.	8.50
"	29.	25.00
"	"	1,000.00
"	"	1,800.00
"	31.	12.00
"	"	125.00

ACCOUNT NO. 2.

Deposits.
1900.

Apr.	30.	$45,000.00
May.	17.	30,000.00
1901.		
Jan.	21.	15,000.00

Checks.
1901.

May	1.	$ 11.50
"	"	10,167.94
"	5.	11.50
"	10.	32,771.57
"	"	400.00
"	17.	371.85
"	"	14,502.18
"	22.	7.50
June	11.	15.50
"	14.	405.75
"	19.	8,500.00

Checks.
1900.

July	14.	$1,199.00 Er.
"	17.	6,635.71 S.
1901.		
Feb.	15.	25.00
"	"	1,470.00
"	"	750.00
"	"	150.00
"	"	58.25
"	"	275.00
"	16.	317.76
"	"	637.68
"	18	4.00
"	"	42.00
"	"	260.00
"	19.	23.50
"	28.	110.00
Meh.	1.	6.75
"	2.	1.00

Checks.
1901.

Meh.	2.	$ 2.75
"	4.	500.00
"	5.	75.00
"	"	125.00
"	"	50.00
"	"	32.00
"	6.	125.00
"	"	358.30
"	"	392.35
"	"	20.00
"	8.	200.00
"	"	6.00
"	"	75.00
"	"	400.00
"	21.	6,096.59

→Trans. to Acct. No. 1

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CASE 3320.

KRIBS' BANK ACCOUNT.

Checks.
1901.

Jan.	2.	$ 70.00	Mar.	20.	$ 5.50		
"	"	3.00	"	21.	1,000.00		
"	"	170.00	"	"	100.00		
"	5.	3.00	"	"	150.00		
"	"	1.00	"	"	200.00		
"	9.	20.00	"	"	700.00		
"	"	5.00	"	"	1,002.00		
"	"	15.00	"	"	1,236.41		
"	18.	4,000.00	"	"	73.00		
"	"	500.00	"	23.	67.50		
"	29.	100.00	"	"	5.00		
"	"	6.00	"	25.	1.00		
"	30.	125.00	"	"	319.62		
"	30.	7.90	"	"	1,278.48		
Feb.	1.	2,540.00	"	26.	3.00		
"	2.	4.00	"	27.	1.50		
"	6.	1.00	"	29.	3.00		
"	12.	800.00	"	"	1,060.00		
"	"	785.00	Apr.	1.	12.60		
"	"	640.00	"	5.	3,045.05		
"	"	200.00	"	6.	528.18–Toussant.		
"	"	100.00	"	8.	2,048.93–Deeds.		
"	"	2,282.00	"	9.	200.00		
"	"	35.00	"	16.	2.00		
"	"	1,600.00	"	17.	2,496.00–Scrip.		
"	"	1.50	"	"	233.47–Cushaw.		
"	"	18.78	"	"	164.60		
Mch.	8.	400.00	"	"	500.00		
"	"	4,000.00	"	18.	169.00		
"	9.	922.00	"	"	45.00		
"	"	100.00	"	"	1,023.53		
"	11.	316.00	"	19.	584.00–Paid Ferrigan.		
"	12.	125.00	"	20.	20.44		
"	13.	410.45	"	"	1,270.00–Sheriff.		
"	14.	526.00	"	22.	37.50		
"	"	1,798.95	"	"	2.90		
"	15.	100.00	"	24.	25.00		
"	16.	250.00	"	26.	20.00		
"	16.	150.00	"	"	640.00		
"	"	50.00	"	30.	80.00		
"	"	375.00	May	2.	1.25		
"	"	150.00	"	6.	111.03		
"	"	770.00	"	16.	4,257.00		
"	18.	100.00	"	28.	18.75		
"	"	1,605.00	June	11.	600.00		
"	"	50.00	"	28.	415.23–Smith.		
"	"	378.00	"	29.	25.00–Taxes.		
"	"	2,054.44	July	1.	125.00–Smith.		
"	19.	600.00	"	2.	75.00		
"	"	1,103.85	"	10.	150.00		
"	"	100.00	"	11.	25.00		
"	20.	200.00	"	15.	150.00		

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

Deposits.

1901.		
Jan.	21.	$12,000.00
Mch.	9.	15,000.00
"	21.	6,096.59
Apr.	11.	10,000.00
"	26.	6,386.73
May	3.	116.73
"	17.	3,363.57
July	17.	3,000.00
Aug.	9.	15,000.00
Oct.	3.	450.00
"	8.	7,000.00
"	24.	11,000.00
"	26.	4,500.00
Nov.	18.	5,000.00
Dec.	9.	9,500.00
"	10.	4,819.25
"	16.	200.00
"	19.	814.50
1902.		
Mch.	7.	86,550.00
"	17.	5,000.00
"	31.	61.82
Apr.	11.	1,364.75
"	16.	200.00
"	26.	2,265.65
May	19.	2,000.00
July	12.	4,000.00
Sep.	19.	1,800.00
"	24.	1,823.37
Oct.	14.	7,500.00
Nov.	26.	3,500.00
Dec.	31.	12,000.00
1903.		
Jan.	5.	30.00
"	16.	7,842.89
Mar.	27.	6,000.00
Apr.	27.	5,000.00
June	22.	6,000.00
July	8.	9,600.00
"	13.	37,000.00
Aug.	15.	307.66
"	17.	10,000.00
1904.		
Jan.	9.	10,000.00
Mch.	22.	1,500.00
Apr.	20.	8,489.74
"	28.	10,000.00

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

Checks.
1901.

July	15.	$ 25.00	Sept.	3.	$ 110.00	Oct.	18.	$ 150.00
"	1.	1,100.00	"	14.	200.00	"	"	19.70
"	"	25.00	"	17.	200.00	"	"	280.00
"	16.	50.00	"	"	200.00	"	"	500.00
"	17.	5.00	"	"	200.00	"	"	150.00
"	18.	25.00	"	"	200.00	"	21.	899.00
"	"	5.00	"	21.	75.00	"	"	30.00
"	"	7.00	"	"	50.00	"	"	200.00
"	19.	150.00	"	"	150.00	"	"	30.00
"	"	100.00	"	"	710.00	"	"	1,486.66
"	"	20.00	"	"	200.00	"	"	100.00
"	20.	310.00	"	"	20.00	"	23.	100.00
"	"	1,673.00	"	28.	250.00	"	25.	7,830.00
"	22.	55.60	"	30.	350.00	"	"	138.75
"	"	30.00	Oct.	1.	50.00	"	26.	200.00
"	24.	195.00	"	3.	450.00	"	"	3,990.00
"	25.	4.00	"	"	2.00	"	"	500.00
"	26.	42.00	"	"	100.00	"	28.	487.00
"	27.	500.00	"	5.	30.00	"	28.	6.00
"	"	250.00	"	"	35.00	"	"	3.50
"	29.	411.16	"	"	136.00	"	"	1.00
"	"	230.00	"	7.	25.00	"	"	40.00
"	"	75.00	"	"	410.00	"	"	80.75
"	30.	3.75	"	"	2.00	"	"	1.25
Aug.	1.	6.00	"	8.	65.00	"	"	150.00
"	"	3.00	"	"	1,143.10	"	29.	1.00
"	2.	175.00	"	9.	35.00	"	30.	150.00
"	2.	75.00	"	"	25.00	Nov.	1.	150.00
"	"	150.00	"	"	34.00	"	4.	100.00
"	"	3.10	"	"	148.75	"	"	5.00
"	5.	250.00	"	"	400.00	"	5.	6.25
"	"	250.00	"	"	2,300.00	"	7.	4,240.00
"	7.	53.08	"	"	1,420.00	"	8.	7.28
"	"	150.00	"	11.	64.00	"	"	27.14
"	9.	8.00	"	"	783.00	"	14.	7.90
"	10.	1.00	"	12.	90.00	"	20.	20.00
"	12.	1.00	"	"	77.00	"	21.	575.00
"	15.	4.00	"	14.	50.00	"	25.	8,941.40
"	24.	10.00	"	"	700.00	"	"	3.00
"	26.	5.00	"	"	100.00	"	29.	10.00
"	27.	20.75	"	15.	25.00	Dec.	5.	150.00
"	"	50.00	"	"	3.00	"	13.	700.00
"	"	25.00	"	16.	186.35	"	16.	500.00
"	28.	1,334.00	"	"	600.00	"	17.	290.00
"	"	160.00	"	17.	200.00	"	18.	833.00
"	"	5.00	"	"	50.00	"	20.	2.50
"	29.	200.00	"	18.	167.00	"	21.	1,200.00
"	31.	801.00	"	"	400.00	"	24.	820.00
"	"	29.90	"	"	181.55	"	26.	9.20

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

Checks.
1902.

Jan.	22	$	690.00	Apr.	21.	$	150.00
"	30.		40.00	"	"		1,140.00
"	31.		40.00	"	24.		75.00
Feb.	1.		10.00–Thom.	"	28.		2.73
"	"		75.00	"	30.		1.00
"	3.		200.00	"	"		25.00
"	"		200.00	May	2.		38.50
"	"		200.00	"	"		150.00
"	5.		100.00–Cannon	"	5.		900.00–Von Pessoll.
"	7.		100.00	"	7.		100.00
"	"		25.00	"	"		243.00
"	"		25.00	"	10.		.75
"	"		25.00	"	"		.75
"	"		2.00	"	19.		300.00
"	10.		25.00	June	4.		300.00–McMullen.
"	"		2.00	"	16.		6.75
"	14.		500.00	"	16.		1,000.00
"	17.		95.00	"	20.		23.00
Mch.	1.		1,281.50	"	"		500.00
"	3.		25.00	"	"		89.30
"	"		79.50	"	30.		120.00
"	5.		10.00	July	1.		9.00
"	6.		150.00	"	"		43.93
"	"		18,000.00	"	"		49.23
"	7.		225.00	"	3.		155.00
"	"		67,700.00	"	"		5.00
"	8.		107.45	"	8.		310.00
"	"		25.00	"	14.		1.00
"	11.		25.00	"	14.		15.00
"	"		5.00	"	17.		900.00–Thom.
"	14.		25.00	Aug.	1.		4.36
"	15.		17.50	"	6.		262.00
"	"		309.73	"	"		106.50
"	17.		4.00	"	"		312.00
"	20.		600.00	"	9.		50.00
"	22.		1,650.00–T. R. S.	"	11.		5.00
"	25.		1,342.05	"	13.		28.00
"	26.		6.00	"	15.		544.00
"	29.		750.00–Thom.	"	16.		100.00
"	31.		1.25–See.	"	18.		2.00
Apr.	7.		800.00–Diller.	"	28.		300.00
"	10.		8.89	"	28.		384.65
"	11.		1.00	Sept.	6.		100.00
"	15.		3,000.00	"	"		91.50
"	"		72.50	"	"		300.00
"	16.		1.25	"	"		24.00
"	"		460.00	"	8.		6.15
"	17.		1,020.70	"	"		100.00
"	"		25.00	"	"		151.65
"	18.		6.25	"	"		60.00
"	"		15.00	"	9.		100.00

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

Checks.
1902.

Sep.	10.	$ 30.00	Dec.	27.	$	1,000.00
"	11.	75.00	"	"		400.00
"	"	50.00	"	29.		30.00
"	198.	100.00				
"	22.	500.00				
"	23.	5.00				
"	"	830.00				
"	25.	50.00				
"	"	410.00				
"	"	240.00				
"	27.	250.00				
"	29.	1.00				
"	"	1.00				
"	"	50.00				
"	"	800.00–Error.				
Oct.	4.	250.00				
"	7.	1.00				
"	11.	70.00				
"	13.	4.25				
"	18.	685.00				
"	20.	200.00				
"	"	600.00				
"	21.	772.04				
"	22.	632.54				
"	"	632.54				
"	"	600.00				
"	"	300.00				
"	28.	1,010.00–Thompson.				
"	"	790.00–Arant.				
"	"	60.00–Thom.				
Nov.	1.	650.00				
"	5.	2,880.00–Welch.				
"	"	860.00–Thompson.				
"	"	1.00				
"	7.	1.00				
"	12.	400.00–Thompson.				
"	14.	383.00				
"	"	1.22				
"	18.	1,979.20–Hacker.				
"	28.	9.72				
"	29.	1,550.00–Given.				
Dec.	13.	500.00–B. McM				
"	24.	550.00–Thompson.				
"	"	1,800.00				

[723]

SOURCES OF DEPOSITS OF FRED A. KRIBS IN FIRST NATIONAL BANK OF ROSEBURG FOR 1901.

To First National Bank of Portland, January 21, 1901; dated January 21, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by "us"; amount $12,000.

To First National Bank of Portland, March 9, 1901; dated March 9, 1901; drawn by Fred A. Kribs on C. A. Smith Lumber Company; endorsed by us; amount $15,000.

To First National Bank of Portland, April, 1901; dated April 8, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $10,000.

To First National Bank of Portland, April, 26, 1901; dated April 24, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by T. R. Sheridan; amount $1,386.73.

To First National Bank, Portland, April 26, 1901; dated April 24, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by T. R. Sheridan; amount $5,000.

To First National Bank, Portland, May 17, 1901; dated May 13, 1901; No. 1185; drawn by Charles A. Pillsbury & Co. on First National Bank of Minneapolis; endorsed by Fred A. Kribs; amount $3,363.57.

To First National Bank of Portland, July 17, 1901; dated July 17, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $3,000.

To National Park Bank of New York, August 9, 1901; dated ———; No. 10505; drawn by Pillsbury-Washburn Flour Milling Co.; on Chase National Bank of New York; endorsed by Fred A. Kribs; amount $10,000.

To First National Bank of Portland, August 9, 1901; dated July 25, 1901; drawn by J. S. Pillsbury; on First National Bank of Minneapolis; endorsed by Fred A. Kribs; amount $5,000.

To C. W. National Bank, San Francisco, October 3, 1901; dated October 2, 1901; No. 690; drawn by Fred A. Kribs; on National Bank of D. O. Mills; endorsed by us; amount $450.

To C. W. National Bank, San Francisco, Calif., October 8, 1901; dated October 8, 1901; No. 691; drawn by F. A. Kribs; on National Bank D. O. Mills; endorsed by us; amount $7,000.

To First National Bank of Portland, October 24, 1901; dated October 24, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $11,000.

To First National Bank of Portland, October 26, 1901; dated October 26, 1901; drawn by F. A. Kribs on C. A. Smith Lumber Company; endorsed by us; amount $4,500.

To First National Bank of Portland, November 16, 1901; dated November 11, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $5,000.

To First National Bank of Portland, December 9, 1901; dated December 4, 1901; No. 1711; drawn by C. A. Smith Lumber Company on National Bank of Republic; endorsed by T. R. Sheridan; amount $9,500.

To First National Bank of Portland, December 10, 1901; dated December 6, 1901; No. 1716; drawn by C. A. Smith Lumber Company on National Bank of Republic of Chicago; endorsed by T. R. Sheridan; amount $4,819.25.

Deposit slip of March 21, 1901, shows deposit of $6,096.59 by check on Kribs account No. 2, First National of Roseburg. **[724]**

CASES 3319–3320.

SOURCES OF KRIBS' DEPOSITS—PAGE "

Deposit slip of May 3, 1901, shows deposit through Ben McMullen, one-half $233 on Wilson deal.

Deposit slip of December 16, 1901, shows "returned by Lebruher" $200.

Deposit slip of December 19, 1901, shows returned on "Hoover and us claims" $814.50. **[725]**

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

TRANSMITTAL SHEETS.

1900.

Account No. 1.

To National Park Bank of New York, New York, April 17, 1900; No. 15798, dated April 12, 1900; drawn by Swedish-National Bank of Minneapolis; on Mercantile National Bank, endorsed by Fred A. Kribs; amount $30,000.00.

To First National Bank of Portland, Oregon, April 30, 1900; No. ——, dated April 30, 1900; drawn by Fred A. Kribs on C. A. Smith Lumber Company; endorsed by "us," amount $5,000; "If not paid on presentation, have Bank wire us."

To First National Bank, Portland, Oregon, May 10, 1900; dated May 10, 1900; drawn by Fred A. Kribs on C. A. Smith Lumber Company of Minneapolis, Minn.; endorsed by "us"; amount $40,000.00; "No Pro." Wire if not paid.

To National Park Bank, New York, May 15, 1900; dated May 8, 1900; No. 15929; drawn by Swedish-American Bank of Minneapolis on Mercantile National Bank of New York; endorsed by F. A. Kribs; amount $20,000.00.

To First National Bank Portland, May 23, 1900; dated May 12, 1900; drawn by Fred A. Kribs on C. A. Smith Lumber Company; endorsed by "us"; amount $20,000.

To First National Bank of Portland, July 11, 1900; dated July 11, 1900; drawn by F. A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by "us"; amount $10,000.

To First National Bank of Portland, July 24, 1900; dated July 23, 1900; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by "us"; amount $30,000.00.

To First National Bank Portland, August 21, 1900; dated August 31, 1900; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by "us"; amount $15,000.00.

To Ladd & Bush, Salem, Oregon, August 8, 1900; dated August 8, 1900; No. 1287; drawn by C. A. Smith Lumber Company; on National Bank of Republic, Chicago; endorsed by F. A. Kribs; amount $300.

To First National Bank of Portland, September 11, 1900; dated September 10, 1900; drawn by Fred

A. Kribs; on C. A. Smith Lumber Company of Minneapolis, Minn.; endorsed by "us"; amount $17,000.00.

To First National Bank of Portland, September 21, 1900; dated September 20, 1900; drawn by F. A. Kribs; on C. A. Smith Lumber Company; endorsed by "us"; amount $5,000.

To First National Bank of Portland, Oregon, October 8, 1900; dated October 4, 1900; No. 1315; drawn by C. A. Smith Lumber Company; on National Bank of Republic of Chicago; endorsed by "us"; amount $7,000.00.

To First National Bank of Portland, December 13, 1900; dated December 13, 1900; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by "us"; amount $10,000.

Deposit slip of July 11, 1900, shows deposit of currency $100.

Account No. 2. (1900.)

First National Bank of Portland, April 30, 1900; dated April 25, 1900; No. 9298; drawn by Pillsbury-Washburn Flour Mills; on Chase National Bank; endorsed by Fred A. Kribs; amount $45,000.00.

To First National Bank of Portland, May 17, 1900; dated May 10, 1900; No. 9361; drawn by Pillsbury-Washburn Flour Mills on Chase National Bank of New York; endorsed by F. A. Kribs; amount $30,000.00. **[726]**

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

REMITTANCE SHEETS ACCOUNT NO. 2—CONTINUED.

To National Park Bank, New York, January 21. 1901; dated December 26, 1900; No. 9869; drawn by Pillsbury-Washburn Co. on Chase National Bank; endorsed by F. A. Kribs; amount $15,000. **[727]**

KRIBS' BANK ACCOUNT FOR 1902.

ROSEBURG, OREGON.

TRANSMITTAL SHEETS.

SOURCE OF DEPOSITS.

Letter of First National Bank of Portland, March 5, 1902, informs First National Bank of Roseburg, that $86,550 has been deposited to its credit by Fred A. Kribs.

Records First National Bank of Portland, shows that under date of March 5, 1902, First National Bank of Roseburg, deposited draft drawn by Fred A. Kribs on Alfred A. Pillsbury, for $16,800.

Also deposited by draft of same date drawn by Fred A. Kribs on C. A. Smith Lumber Company for $69,750.

Letter of First National Bank of Portland, March 17, 1902, informs First National Bank of Roseburg, that $5,000 has been deposited to its credit by Fred A. Kribs.

Records First National Bank of Portland show that March 17, 1902, draft drawn by Fred A. Kribs

on C. A. Smith Lumber Company for $5,000.

National Park Bank New York April 11, 1902; dated March 20, 1902; No. 4492; drawn by Aitkin Co. Bank of Warroon *(?)*; endorsed by Fred A. Kribs; amount $348.

Same. No. 4493; amount $1,000.

To First National Bank of Eugene, April 16, 1902; dated April 12, 1902; drawn by H. G. McKinley; on "us"; endorsed by F. A. Kribs; amount $200.

To First National Bank of Portland, April 26, 1902; dated April 24 (1902); No. 34; drawn by Fred A. Kribs; on Merchants National Bank of Portland; endorsed by T. R. Sheridan; amount $2,265.66.

To First National Bank of Portland, August 12, 1902; dated August 12, 1902; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $4,000.00.

To First National Bank of Portland, September 19, 1902; dated September 18, (1902); drawn by Fred A. Kribs; on Merchants National Bank; endorsed by us; amount $1,800.00.

To First National Bank of Portland, September 24, 1902; dated September 23, (1902); drawn by Fred A. Kribs; on First National Bank of Minneapolis; endorsed by us; amount $1,823.37.

To First National Bank of Portland, October 13, 1902; dated October 8, (1902); No. 171; drawn by Charles A. Pillsbury; on First National Bank of Minneapolis; endorsed by F. A. Kribs; amount $7,500.00.

To First National Bank of Portland, November 26, 1902; dated November 21, (1902); No. 27 (1) 781;

drawn by (S. W.) Duluth; on them; endorsed by Fred A. Kribs; amount $3,500.

To First National Bank of Portland, December 21, 1902; dated December 30, (1902); drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $12,000.00

Deposit slip of March 3, 1902, shows $61.82, deposited by T. R. S. (evidently T. R. Sheridan) by check, on scrip deal.

Deposit slip of May 19, 1902, shows check credit of $3,000, by "Scrip returned." **[728]**

KRIBS' BANK ACCOUNT.

ROSEBURG.

SOURCE OF DEPOSITS FOR 1903 & 1904.

1903.

To First National Bank of Portland, January 16, 1903; dated December 5, 1902; No. 44410; drawn by C. A. Smith Lumber Company on First National Bank of Minneapolis; endorsed by Fred A. Kribs; amount $7,986.69. *(?)*

To First National Bank of Portland, March 27, 1903; dated March 27, 1903; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $6,000.00.

To First National Bank of Portland, May 4, 1903; dated May 1, 1903; drawn by F. A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $5,000.00.

To First National Bank of Portland, June 20, 1903; dated June 20, 1903; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $6,000.00.

To First National Bank of Portland, July 8, 1903; dated July 6, (1903); No. 84; drawn by George Mandig on First National Bank of Grand Rapids; endorsed by F. A. Kribs; amount $5,760.

To First National Bank of Portland, July 8, 1903; dated July 6, (1903); No.—— drawn by Chas. Gage; on First National Bank of Minneapolis; endorsed by F. A. Kribs; amount $3,840.00.

To First National Bank of Portland, July 11, 1903; dated July 11, (1903); drawn by Fred A. Kribs on Chas. A. Pillsbury of Minneapolis; endorsed by us; amount $3,200; (This draft seems not to have been deposited to Kribs' credit).

To First National Bank of Portland, July 13, 1903; dated July 11, 1903; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $37,000.00.

To First National Bank of Portland, August 15, 1903; dated August 15, 1903; drawn by F. A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $10,000.00.

Deposit slip of January 9, 1903, shows deposit of $30.00 by check of T. R. S. (T. R. Sheridan.)

Deposit slip of August 14, 1903, shows deposit of $307.66, by check No. ..... No statement upon whom same was drawn.

1904.

To First National Bank of Portland, January 9, 1904; dated January 8, (1904); drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $10.000.

To First National Bank of Portland, April 28,

1904, dated April 26, drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $10,880.00.

Nothing found as to deposit of $1,500 on March 28, 1904; $8,489.74. April 20, 1904. **[729]**

CASE 3320.

EXTRACTS FROM ACCOUNT OF J. H. BOOTH, RECEIVER, WITH FIRST NATIONAL BANK OF ROSEBURG.

DEPOSITS.

1900.

April.	20–	$10,384.81
May.	17	6,381.76

Deposit slip of April 20, 1900, shows two items for $7,200 and 410.75, checks on First National Bank of Roseburg, identical sums checked by F. A. Kribs on said bank on said date. Desk book shows no other checks of like denomination paid on that date.

Deposit slip of May 17, 1900, shows one item by check on First National Bank of Roseburg for $8,962.60, sum identical with check of F. A. Kribs cashed on said date and desk book shows no other check of like denomination cashed on said date. **[730]**

CASE 3319.

EXTRACTS FROM ACCOUNT OF J. H. BOOTH, RECEIVER, WITH FIRST NATIONAL BANK OF ROSEBURG.

DEPOSITS.

1900.

Aug.	18.	$1,935.40
Sep.	1.	6,676.86

Oct. 10. $4,155.68
" 17. 410.61

Deposit slip of August 17, 1900, shows check on First National Bank of Roseburg for $1,642.04, identical sum of check of F. A. Kribs cashed on said date.

Deposit slip of September 1, 1900, shows item of $3,696.46 by check on First National Bank of Roseburg, identical sum of check of F. A. Kribs on said bank cashed on that date.

Deposit slip of October 10, 1900, shows item of $4,155.68, identical sum checked by F. A. Kribs on First National of Roseburg on that date.

Deposit slip of October 17, 1900, shows single item of $410.61 by check, bank not named, same amount checked by F. A. Kribs on First National of Roseburg on that date. **[731]**

CASE 3320.

ACCOUNT OF S. A. D. PUTER WITH FIRST NATIONAL BANK OF ROSEBURG.

Deposits.		Checks.	
1900.		1900.	
Apr. 19.	$4,000.00	Apr. 19.	$ 500.00
" 26.	849.25	" "	240.00
1901.		" "	100.00
Meh. 20.	200.00	" 20.	150.00
		" "	300.00
		" "	40.00
		" "	85.00
		" "	25 00
		" "	75.00
		" "	105.00
		" "	2,000.00
		" 21.	2.00
		" "	15.00
		" 23.	50.00
		May 1.	18.00
		" 4.	25.00
		" 12.	448.93
		June 13.	6.50
		July 2.	100.00
		Nov. 5.	35.00
		1901.	
		Meh. 20.	$ 200.00
		" 25.	209.00

SOURCES OF DEPOSITS OF S. A. D. PUTER REMITTANCE SHEETS.

To First National Bank of Portland, April 19, 1900; dated April 12, 1900; No. 1514; drawn by cashier; on Wells-Fargo Bank—endorsed by S. A. D. Puter; amount $400.00.

To First National Bank of Portland; April 19, 1900; dated April 12, 1900; drawn by and on Wells-Fargo Bank of Portland; endorsed by S. A. D. Puter; amount $4,000.00. **[732]**

Government's Exhibit No. 75.

No. 3319.

(This is a torn check pasted on sheet of paper.)

FIRST NATIONAL BANK ——— 16, 1900.

No. ——

PAID

—— ——— BANK OF ROSEBURG,

——— J. H. ——— or order, $1642 04/100 Six-teen hun ——— 04/100 D———

———d. A. KRIBS.

——642.04 No. ——

——— to J. H. ———

——— fee Wm. Meal———

Filed May 10, 1910. G. H. Marsh, Clerk. **[734]**

Government's Exhibit No. 76.

(4 checks)

No. 3319.

PAID
Aug. 16, 1900.
Roseburg, Oregon.

(United States
Internal Rev.
stamp)

Roseburg, Oregon, Aug. 16, 1900. No. ——
FIRST NATIONAL BANK OF ROSEBURG.
Pay to Wm. R. Mealey or Bearer, $389 44/100
Three hundred eighty-nine and 44/100 Dollars.
FRED A. KRIBS.

Endorsed: Wm. R. Mealey.

PAID
Sep. 4, 1900.
Roseburg, Oregon.

(U. S. Internal
Rev. Stamp)

Roseburg, Oregon, Aug. 16, 1900. No. ——
FIRST NATIONAL BANK OF ROSEBURG.
Pay to Wm. R. Mealey or Bearer, $429.52/100
Four Hundred twenty nine and 52/100 Dollars.
FRED A. KRIBS.

Endorsed:
Wm. R. Mealey.
Pay to any Bank or Banker
or order
P. M. Scroggin & Co., Bankers,
Lebanon, Oregon.
P. M. Scroggin, Cashier.

[735]

GOVERNMENT'S EXHIBIT 76 (Cont.)

(U. S. Internal
Revenue stamp)

FIRST NATIONAL ——
PAID
Aug. 27, 1900.
Roseburg, Oregon.

Roseburg, Oregon, Aug. 16, 1900. No. ——

FIRST NATIONAL BANK OF ROSEBURG.

Pay to J. A. Thompson or Bearer, $100.00, One Hundred and no/100 Dollars.

FRED A. KRIBS.

(Endorsed): J. A. Thompson.

(U. S. Internal
Revenue stamp)

FIRST NATIONAL BA——.
PAID
Aug. 27, 1900.
Roseburg, Oregon.

Roseburg, Oregon, Aug. 16, 1900. No. ——.

FIRST NATIONAL BANK OF ROSEBURG.

Pay to O. Judd Mealey, or Bearar, $100.00, One Hundred and no/100 Dollars.

FRED A. KRIBS.

(Endorsed): O. Judd Mealey.

Filed May 10, 1910. G. H. Marsh, Clerk. **[736]**

Government's Exhibit No. 77.

(5 checks)

No. 3319.

PAID
Sep. 27, 1900.
Roseburg, Oregon.

First National Bank
No. B 4817
Portland, Ore.

Roseburg, Oregon, Aug. 27, 1900. No. ——.

(U. S. Internal
Revenue stamp)

FIRST NATIONAL BANK OF ROSEBURG,

Pay to J. A. Thompson or Bearer, $333 33/100,
Three hundred thirty three & 33/100 Dollars.

FRED A. KRIBS.

(ENDORSED):
J. A. Thompson.
Pay L. Dinkelspiel & Sons
J. P. Hahn.
Pay to the order of the London, Paris & American
Bank, (Limited)
L. Dinkelspiel & Sons.
Pay yourselves
FIRST NATIONAL BANK, Portland, Oregon.
G. E. Withington, Cashier.
Pay to the order of First Nat'l. Bank
Portland, Or.
London, Paris, and American Bank, Limited.

(U. S. Internal
Revenue Stamp)

FIRST NATIONAL BANK

PAID

Sep. 25, 1900.

Roseburg, Oregon.

Roseburg, Oregon, Aug. 27, 1900. No.——.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to O. J. Mealey, or Bearer, $333 33/100,

Three hundred thirty three and 33/100 Dollars.

FRED A. KRIBS.

2481

(Endorsed): O. J. Mealey.

Pay YOURSELVES or Order.

FIRST NATIONAL BANK,

Albany, Oregon. **[737]**

GOVERNMENT'S EXHIBIT 77 (Cont.)

(U. S. Internal
Revenue Stamp)

PAID

Sep. 25, 1900.

Roseburg, Oregon.

Roseburg, Oregon, Aug. 27, 1900. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to Wm. R. Mealey, or Bearer, $333 34/100,

Three hundred thirty three and 34/100 Dollars.

FRED A. KRIBS.

#2483.

(Endorsed):

Wm. R. Mealey.

Pay YOURSELVES or order

First National Bank, Albany, Oregon.

(U. S. Internal
Revenue Stamp)

FIRST NATIONAL ——

PAID

Sep. 6, 1900.

Roseburg, Oregon.

Roseburg, Oregon, Aug. 27th, 1900. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to J. A. Thompson, or Bearer, $329.49, Three hundred twenty-nine and 49/100 Dollars.

FRED A. KRIBS.

(Endorsed):

J. A. Thompson

George Kiehl

Pay any Bank or Banker or Order

P. M. SCROGGIN & CO., Bankers.

Lebanon, Oregon.

P. M. Scroggin, Cashier.

(Internal Revenue stamp)

FIRST NATIONAL BANK

PAID

Aug. 28, 1900.

Roseburg, Oregon, Aug. 27th, 1900. No. ——

FIRST NATIONAL BANK OF ROSEBURG,

Pay to Judd Mealey, or Bearer, $329 51/100, Three Hundred twenty-nine and 51/100 Dollars.

FRED A. KRIBS.

(Endorsed): Judd Mealey.

16964.33
329.51
6.90
4.
5709.27
23014.01

Filed May 10, 1910. G. H. Marsh, Clerk. **[738]**

Government's Exhibit No. 78.

No. 3319.

(3 checks)

U. S.
(Internal
Revenue stamp)

FIRST NATIONAL ——

PAID SEP. 25, 1900.

Roseburg, Oregon.

Roseburg, Oregon, Sept. 16th, 1900. No. ——

FIRST NATIONAL BANK OF ROSEBURG,

Order

Pay to Wm. R. Mealey, or ~~Bearer~~ $542 53/100 Five Hundred forty two and 53/100 Dollars.

2482 FRED A. KRIBS.

(Endorsed): Wm. R. Mealey.

Pay YOURSELVES or Order.

FIRST NATIONAL BANK

Albany, Oregon.

(U. S. Internal
Revenue stamp)

PAID Oct. 9, 1900.

Roseburg, Oregon.

Roseburg, Oregon, Sept. 16, 1900. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Order

Pay to J. A. Thompson or ~~Bearer~~ $542 33/100, Five Hundred forty two and 33/100 Dollars.

FRED. A. KRIBS.

(Endorsed):
J. A. Thompson.
O. J. Mealey.

(U. S. Internal
Revenue Stamp)

FIRST NATIONAL BANK

PAID SEP. 25, 1900.
ROSEBURG, ORE.

Roseburg, Oregon, Sept. 16th, 1900. No. ——
FIRST NATIONAL BANK OF ROSEBURG,
Order

Pay to O. J. Mealey, or ~~Bearer~~, $542 53/100, Five Hundred forty two and 53/100 Dollars.

2480 FRED A. KRIBS.

(Endorsed):

~~O. J. Mealey~~ O. J. Meley O. J. Mealey
Pay YOURSELVES OR ORDER
FIRST NATIONAL BANK, Albany, Oregon.
Filed May 10, 1910. G. H. Marsh, Clerk. **[739]**

Government's Exhibit No. 79.

No. 3319.
(U. S. Internal
Revenue stamp)

PAID
Dec. 14, 1900.
Roseburg, Oregon.

Roseburg, Oregon, Dec. 13, 1900. No. ——
FIRST NATIONAL BANK OF ROSEBURG,
Order

Pay to Mealey Bros. or ~~Bearer~~, $850.00, Eight hundred fifty and no/100 Dollars.

FRED A. KRIBS.

(ENDORSED):
Mealey Bros.
O. J. Mealey.
Filed May 10, 1910. G. H. Marsh, Clerk. [740]

Government's Exhibit No. 80.

No. 3319.

(U. S. Internal
Revenue stamp)

PAID
Nov. 10, 1900.
Roseburg, Oregon.

8 Roseburg, Oregon, Nov. 1st, 1900. No. ——
(First National Bank)
(No. B 519)
(Portland, Ore.)

FIRST NATIONAL BANK OF ROSEBURG,
Order
Pay to Wm. R. or O. J. Mealey, or ~~Bearer~~ $300.00
Three hundred and no/100 Dollars.
FRED. A. KRIBS.

(ENDORSED):
Pay to the
FIRST NATIONAL BANK of
Albany, Oregon.
O. J. Mealey.
O. J. Mealey.
Pay FIRST NATIONAL BANK,
Portland, Ore.
or order.
FIRST NATIONAL BANK,
Albany, Ore.,

E. W. Langdon, Cashier.
Pay YOURSELVES
FIRST NATIONAL BANK,
Portland, Oregon.
G. E. Withington, Cashier.
Filed May 10, 1910. G. H. Marsh, Clerk. **[741]**

Government's Exhibit No. 81.

No. 3319.

(3 checks)

(U. S. Internal
Revenue Stamp)

PAID Dec. 13, 1900.
Roseburg, Oregon.

Roseburg, Oregon, Dec. 13, 1900. No. ——

FIRST NATIONAL BANK OF ROSEBURG,
Order

Pay to J. A. Thompson, or ~~Bearer~~, $940.82, Nine hundred forty and 82/100 Dollars.

FRED A. KRIBS.

(Endorsed):
J. A. Thompson.

(U. S. Internal
Revenue Stamp)

PAID Dec. 13, 1900.
Roseburg, Oregon.

Roseburg, Oregon, Dec. 13, 1900. No. ——

FIRST NATIONAL BANK OF ROSEBURG,
Order

Pay to Mealey Bros. or ~~Bearer~~, $940.82, Nine hundred forty and 82/100 Dollars.

(W. R. M.) FRED A. KRIBS.

(Endorsed): Mealey Bros.
O. J. Mealey.

(U. S. Internal
Revenue Stamp)

PAID DEC. 13, 1900.
Roseburg, Oregon.

Roseburg, Oregon, Dec. 13, 1900. No. ——

FIRST NATIONAL BANK OF ROSEBURG,
Order

Pay to O. J. Mealey, or ~~Bearer~~ $638 32/100, Six hundred thirty eight and 32/100 Dollars.

FRED A. KRIBS.

(Endorsed):
O. J. Mealey.

Filed May 10, 1910. G. H. Marsh, Clerk. **[742]**

Government's Exhibit No. 82.

(3 checks).

No. 3319
(First National Bank)
(No. 5999)
(Portland, Oregon.)

PAID
Oct. 21, 1902.
Roseburg, Oregon.

Roseburg, Oregon, Oct. 17, 1902. No. ——.
18

FIRST NATIONAL BANK OF ROSEBURG,
Order

Pay to J. A. Thompson, or ~~Bearer,~~ $772.04, Seven Hundred Seventy-two and 4/100 Dollars.

FRED A. KRIBS.

(ENDORSED):
J. A. Thompson
Pay FIRST NATIONAL BANK, Portland, Ore.
or order
FIRST NATIONAL BANK, Albany, Ore.
E. W. Langdon, Cashier.
Pay YOURSELVES
FIRST NATIONAL BANK, Portland, Oregon,
J. W. Newkirk, Cashier.
FIRST NATIONAL BANK
PAID OCT. 22, 1902.
ROSEBURG, OREGON.
(First Natl. Bank)
(No. 5919)
(Portland, Ore.)

20 Roseburg, Oregon, Oct. 17, 1902. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,
Order

Pay to W. R. Mealey or ~~Bearer,~~ $632 54/100 Six Hundred thirty-two and 54/100 Dollars.

FRED A. KRIBS.

(ENDORSED):
Wm. R. Mealey
Pay First National Bank, Portland, Ore.
or order,
FIRST NATIONAL BANK, Albany, Ore.
B. W. Langdon, Cashier.
Pay YOURSELVES
FIRST NATIONAL BANK, Portland, Oregon.
J. W. Newkirk, Cashier. **[743]**

GOVERNMENT'S EXHIBIT 82 (Cont.).

No. 3319
(First Nat'l. Bank)
(No. 5920.)
(Portland, Ore.)

PAID
Oct. 22, 1902.

20 Roseburg, Oregon.

Roseburg, Oregon, Oct. 17th, 1902. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Order

Pay to O. J. Mealey, or ~~Bearer,~~ $632 54/100 Six Hundred thirty-two and 54/100 Dollars.

FRED A. KRIBS.

(ENDORSED):

O. J. Mealey
Pay FIRST NATIONAL BANK,
Portland, Ore., or order,
FIRST NATIONAL BANK
Albany, Ore.
B. W. Langdon, Cashier.
Pay YOURSELVES
FIRST NATIONAL BANK,
Portland, Oregon.
J. W. Newkirk, Cashier.

Filed May 10, 1910. G. H. Marsh, Clerk. [744]

And, to wit, on the 1st day of July, 1910, there was duly filed in said court the Depositions taken before George F. Hitchcock, Special Examiner, in words and figures as follows, to wit: **[745]**

[Testimony and Exhibits Taken and Introduced Before the Special Examiner.]

(Title of Court and Cause.)

Depositions of witnesses taken on behalf of the defendants in the above-entitled cause, before Geo. F. Hitchcock, Jr., Special Examiner, pursuant to the order hereto attached, beginning on the 9th day of June, 1910, and concluded on the 10th day of June, 1910, Mr. John McCourt, U. S. Attorney appearing on behalf of the complainant, and Messrs. Lind & Ueland on behalf of the defendants. Thereupon the following proceedings were had:

It is stipulated by and between the attorneys for the respective parties that the testimony taken in case No. 3320 shall stand as the testimony taken in and apply in above-entitled case so far as applicable. **[746]**

[Testimony of Mrs. Ethel Steele, for Defendants.]

Mrs. ETHEL STEELE, a witness produced on behalf of the defendants, after being first duly sworn, testified as follows in answer to questions by Mr. Ueland:

Q. Your name is Mrs. Ethel Steele, is it not?

A. Yes, sir.

Q. Where do you reside, Mrs. Steele?

A. No. 11 South 12th street.

Q. In what city?

A. Minneapolis, Minnesota.

Q. How long have you lived here in Minneapolis?

A. Since 1888.

Q. What occupation have you, if any?

A. I am employed as a clerk for the C. A. Smith Timber Company.

Q. How long have you been so employed, Mrs. Steele? A. Nearly ten years.

Q. Continuously? A. Yes.

Q. Where in this city is the office of the C. A. Smith Timber Company?

A. It is located at #411 Andrus Building.

Q. And about how long has the office been at that place?

A. I think it is about six years. Between five and six years.

Q. While employed in that office state whether or not you have done any stenographic and typewriting work.

A. Yes, I have done considerable of it.

Q. Is that office one or a suite of several rooms?

A. A suite of four rooms.

(Testimony of Mrs. Ethel Steele.)

Q. In which of those four *room* are you when at work?

A. In the main room; the first that you enter.

Q. Is that an ante-room to the other rooms?

A. Yes. **[748]**

Q. That is, coming into this suite of offices every one comes first into the room where you are occupied? A. Yes.

Q. And from that room into the other rooms?

A. Yes.

Q. Does Mr. C. A. Smith occupy one of those four rooms as a private room? A. Yes.

Q. And has during the time you refer to?

A. Yes, sir.

Q. Is that an inner room; one of those inner rooms? A. Yes, sir.

Q. And does Charles L. Trabert occupy another of those inner rooms? A. Yes, he does.

Q. While employed as you have stated state whether you have occasionally been called upon to witness documents executed by Mr. Smith?

A. Yes, I have been very frequently.

Q. Frequently? A. Yes.

Q. (Showing witness paper.) Mrs. Steele, I show you a document that is marked U. S. Exhibit 155; look it all over, including the signatures; I also show you a document that is marked "Defense Exhibit 'C' for Identification." Look that all over, please; I also show you a document marked "Defense Exhibit 'D' for Identication." Have you seen those three documents before? A. Yes, sir, I have.

Q. Do you know who prepared those documents;

(Testimony of Mrs. Ethel Steele.)

that is the typewriting?

A. The typewriting I did myself.

Q. Mrs. Steele, I call your attention to certain figures in pencil on U. S. Exhibit 155, "41,967.40 acres," and under that, "80,000" in figures.

A. Yes.

Q. And I call your attention also to pencil marks at the top **[749]** of "Defense Exhibit 'C' for Identification," "7,440 acres," and underneath that in figures "15,000." And I call your attention also to figures in pencil at the top of "Defense Exhibit 'D' for Identification," "3,371.28 acres," and underneath, "5,000" in figures. A. Yes.

Q. Do you know who made those pencil figures?

A. I made them myself.

Q. And when did you make those pencil figures with reference to the time the typewriting was done?

A. I made out the bodies and we left the place for the consideration blank; then we figured the acreage in each deed to estimate the consideration.

Q. When you say "we," who do you mean by "we"?

A. Well, I counted up the acres, and Mr. Trabert named the consideration for that number of acres.

Q. For each deed? A. Yes.

Q. So the figures I have read in each deed which we find in pencil under the figures denoting the acreage, signify, then, if I understand you right, the consideration to be put into the deed?

A. Yes. I made the notation on each deed so that I would not make any mistake in putting it in

(Testimony of Mrs. Ethel Steele.)

on the typewriter.

Q. You made those notations, then, before you put in the consideration in the body of the deed in typewriting? A. Yes.

Q. Do you now recognize the figures in pencil as being in your own handwriting?

A. Yes, sir.

Q. Upon each instrument? A. Yes, sir.

Q. Mrs. Steele, what is your recollection as to the time when this was done with reference to the dates that we find in typewriting [750] in these deeds, namely, June 4, 1906?

A. Why, I am positive it was in that year, on account of the plans I made for a vacation at that time. That brings it fresh to my memory when it was.

Q. I call your attention to the name "Ethel Steele," as a witness on each of these three documents; is that in your handwriting? A. It is.

Q. Mrs. Steele, can you remember the specific occurrence when you witnessed the execution of these three deeds; can you remember where you were, and remember seeing Mr. and Mrs. Smith sign?

A. I can't remember, more than I know I was in the office. I have never signed any papers outside of the office.

Q. But you cannot remember specifically the occurrence of seeing them signed?

A. I can't remember which room I was in, no.

Q. Mrs. Steele, did you have a vacation in the year 1906? A. Yes, sir.

(Testimony of Mrs. Ethel Steele.)

Q. Can you remember whether these deeds were executed before or after that vacation?

A. They were executed before.

Q. Have you anything by which you can fix the time of that vacation? A. Yes, I have.

Q. Have you anything with you?

A. I have a canceled check with me that I got cashed on that vacation.

Q. Where did you go on that vacation?

A. I went to Seattle.

Q. You went to Seattle, and in going on that vacation did you receive a check for use while on your vacation?

A. No, I got the check before I left the office, and took it along with me. **[751]**

Q. You took it along with you? A. Yes.

Q. And where did you cash that check?

A. At the Rainier Grand Hotel.

Q. In Seattle? A. Yes.

Q. And have you that check here?

A. Yes, I have.

Q. Will you produce it?

A. (Producing paper which is marked Defendants' Exhibit "M.")

Mr. UELAND.—I offer it in evidence. It is only offered for the purpose of fixing the time, in connection with her testimony. The offer includes the endorsement on the back showing that she drew the money.

Mr. McCOURT.—The check is objected to as immaterial.

Q. And as I understand you, you do remember

(Testimony of Mrs. Ethel Steele.)

so that you can testify that the deeds were executed before you started on the vacation on which you got that check to take along? A. Yes.

Q. This check appears to be dated July 31st, 1906? A. Yes.

Q. And is that about the time you started on that vacation?

A. I am positive that is the day I started.

Q. You are positive that is the day you started?

A. It was within a day or two any way.

Cross-examination.

(By Mr. McCOURT.)

Q. Do you execute, or rather make out a great many deeds, Mrs. Steele?

A. I make practically all the deeds.

Q. From dictation, or do you draft them yourself from forms in the office?

A. I usually put the descriptions on from [752] checked plats.

Q. In this case you took the descriptions out of plats, did you, or were they given to you by Mr. Trabert?

A. I can't remember whether he gave me these descriptions. I know that I checked them on the plats before I made the deeds, because I always do. It is easier for me to read them.

Q. You say you have no recollection of the execution of those deeds so far as the deeds themselves are concerned?

A. I know that is my signature.

Q. Yes, from the fact that you see it on there?

A. Yes.

(Testimony of Mrs. Ethel Steele.)

Q. But the incident itself you don't recall?

A. I remember of witnessing the deeds.

Q. These particular deeds?

A. Well, I couldn't swear as to that, but I know I was there at the time, and I had been working on them; but there is no question in my mind but what that is my signature.

Q. No, I don't think there is any question about that at all.

A. No, sir. On the check you can see also.

Q. But what I am trying to get at, how is it that you can recall that the matter occurred before you went to Seattle, and still you don't have any recollection at all of the incident of signing the deeds as a witness, of seeing Mr. and Mrs. Smith sign them?

A. Because this work kept me. I had to postpone my vacation on account of this large amount of work.

Q. Well, these deeds were not completed on the 4th day of June then; it was sometime later?

A. It was during the month.

Q. During the month of June? A. Yes.

[753]

Q. You left sometime early in July?

A. Yes.

Q. And you had worked on these deeds up to the time you left, or nearly so?

A. Most of the time. We had other work. I had to stay a little while afterward, because our work had piled up on account of having this extra.

Q. What time did you contemplate going if it hadn't been for this work?

(Testimony of Mrs. Ethel Steele.)

A. Why, somewhere along before the first of July.

Q. You didn't go then until after the first of July? A. No.

Q. So that the 4th day of June, upon which the deeds purport to have been executed, is not the correct date; it was sometime later than that; early in July probably?

A. It took a few days to make the deeds. Took several days to make them.

Q. Then, the date of the 4th of June, upon which Mr. Trabert signs his acknowledgement, would not have been the time then that he did actually acknowledge them; he must have acknowledged them some time later in the month, or early in July?

A. I could not tell as to the date that he made those deeds out.

Q. What did you do with the deeds when you had them completed; that is, when you completed the typewriting what did you then do?

A. Gave them to Mr. Trabert.

Q. Did you bind them up before you gave them to him? A. Yes, I bound them up.

Q. Then you had put in this consideration before you bound them up?

A. Yes, sir, before they were executed.

Q. As soon as you had them off the typewriter and got the [754] consideration, found out what the consideration was, you placed it in the deed and bound it up with this cover; this is your binding?

A. Yes, sir.

Q. Who put on the endorsement? Did you en-

(Testimony of Mrs. Ethel Steele.)

dorse the deed there? *A* Is that your writing? (Showing witness paper.)

A. That is not my handwriting.

Q. I exhibited to you then "Defense Exhibit 'D' for Identification." I now exhibit to you Government Exhibit No. 59 in case No. 3319, and Government Exhibit No. 155 in case No. 3320, and ask you whether or not the handwriting in the endorsement on the cover of that deed is in your handwriting, especially the word "Linn"?

A. No, that is not mine.

Q. Do you know whose handwriting that is?

A. No, I don't.

Q. Now this deed appears to be press copied; did you press copy it? A. Yes, sir.

Q. What kind of record did you keep it in?

A. I don't know whether we saved the impression copy or not.

Q. What was the purpose of the press copy?

A. Because the ribbon smeared on the paper.

Q. And when was that done with reference to the binding? A. It was done before I bound it.

Q. Just before you bound it? A. Yes.

Q. Now those signatures of Mr. Smith and Mrs. Smith appear to be press copied there, do they not? Look at that and see if it isn't? Examine it closely; it is, is it not?

A. It doesn't look to me as though it was.

Q. You don't think it was press copied?

A. I don't think so. **[755]** It doesn't look so to me.

(Testimony of Mrs. Ethel Steele.)

Q. So that you press copied these instruments before you bound them up, and then the signatures were put on afterwards?

A. Yes, sir, that is the way I think it is. I know that I copied them and bound them.

Q. Now, whose work is the acknowledgement of Mr. Trabert; that is the typewritten part?

A. That is mine.

Q. How was it that you didn't put that on the same kind of paper, or on the same kind of a machine; apparently you wrote that on a different ribbon?

A. I don't recall why. I don't recall the reason for it.

Q. Well, does it occur to you that this acknowledgement part of it was written a long time afterwards when you had changed ribbons on your machine?

A. We have three or four machines in the office.

Q. Do you use three or four yourself?

A. Yes.

Q. Why do you use three or four?

A. Well, we have a general machine up there that everyone uses, and one of the others might have been used at the time.

Q. Do you ordinarily make your deeds out on a copying ribbon? A. Yes.

Q. What is the reason for that? Why do you use it?

A. We have a rapid roller press in the office.

Q. What is that for?

A. To copy our letters, and of course we have a

(Testimony of Mrs. Ethel Steele.)

copying ribbon on the machine. On all the machines, and so when we make deeds I would frequently copy them because there is too much ink on them. **[756]**

Q. Then, if you made them on a record ribbon there would not be so much ink on them, would there?

A. I know, but I use the same machine for writing letters occasionally.

Q. You don't know how Mr. Trabert figured the consideration in these deeds?

A. No, I don't know anything about that.

Q. Or whether it was just an arbitrary consideration placed in there, without any—

A. I haven't any knowledge of that.

Q. (Showing witness paper.) I wish you would examine Defendants' Exhibit "C" there and state whether the typewriting in the acknowledgement in that is not in the same typewriting as the body of the deed, and also whether or not the signature of Charles L. Trabert was not press copied in that one as well as the signatures of C. A. Smith and wife.

A. Because this is a carbon copy.

Q. This is a carbon copy? A. Yes.

Q. Has the acknowledgement, the typewriting in the acknowledgement been copied?

A. This acknowledgement?

Q. Yes. A. No.

Q. The typewriting itself? A. No.

Q. Has the deed been copied?

A. Yes, I think that deed is copied.

Q. It is not a carbon copy?

(Testimony of Mrs. Ethel Steele.)

A. No, the deed is not. The deed is an original. The acknowledgement is a carbon copy.

Q. And never press copied?

A. The acknowledgement, no.

Q. (Showing witness paper.) Now examine Defendants' Exhibit "D" for the same purpose, noticing the acknowledgement and the [757] balance of the deed; also the signature of Mr. Trabert, and the signature of the parties.

A. This appears to be the original of that carbon copy (referring to the acknowledgement in exhibit "C").

Q. As I understand you, the acknowledgement on one document is a carbon copy of the other?

A. Here is a little mistake here; you can see from that that it is the same.

Q. Yes, that appears to be. One appears to be a carbon copy of the other. State whether or not that acknowledgement there was press copied, the typewriting, or the signature either for that matter?

A. The typewriting looks as though it was.

Q. You think the signature was not?

A. No.

Q. I hand you Government's Exhibit 161, in case 3320, and Government's Exhibit 65 in case No. 3319, and ask you whether or not you drew or did the typewriting in that instrument?

Mr. UELAND.—I object to that as not cross-examination.

A. I don't think I did this one.

Q. Did you copy it?

A. No, I don't recall it. The type is identical

(Testimony of Mrs. Ethel Steele.)

with one machine we have in the office, but I don't think that I did it.

Q. The signatures upon that are copied, are they not?

A. It doesn't look to me like it was copied.

Q. Look at the acknowledgement there.

A. These signatures were not copied I don't think.

Q. Just the typewriting?

A. I couldn't say whether the typewriting is or not. It doesn't look as if it was. It looks rather like there was too much ink on it. **[758]**

Q. Isn't that blur and spread there the evidence of having been copied, especially upon the line made by the typewriter?

A. That blur on the line is occasioned from the words on the other side of the paper. It strikes through.

Mr. UELAND.—It is understood that this is all under the same objection.

Mr. McCOURT.—Yes.

Q. Do you have any typewriters with record ribbons on them?

A. What do you call "record ribbons"?

Q. One not a copying ribbon.

A. We always use copying ribbons.

Q. In all your deeds? A. Yes.

Q. But you did have record ribbons in the office?

A. No—I didn't know what a record ribbon was.

Q. What you might call a fast ribbon; one that won't copy.

(Testimony of Mrs. Ethel Steele.)

A. No, we haven't any of those. We have never had any.

Q. I show you Government Exhibit 155, in case No. 3320, and I call your attention to the acknowledgement. A. Isn't that a copying ribbon?

Q. Well, that is what I am asking you. Isn't that a record ribbon?

A. No, that is a copying ribbon.

Q. You think that will copy?

A. (Illustrating.) You can see it there, that it is a copying ribbon. You can see from that.

Q. Has that ever been copied?

A. Why, I don't think it has. *I* doesn't look to me as though it had.

Q. It hasn't any blur on there, has it?

A. It hasn't as much ink on it, as on the purple.

[759]

Q. The purple ribbon carries the greater amount of ink? A. Usually.

Q. (Showing witness paper.) Now, I will ask you whether or not you did the typewriting work in Government Exhibit 159?

Mr. UELAND.—This is also objected to as not proper cross-examination, irrelevant and immaterial.

A. I can't say positively. I think I made this, but I made it part on one machine and part on the other, or it might be that they had the stenographer copy part of it.

Q. Well, has that never been copied?

A. I say copied from mine.

Q. I understand, but has it ever been copied in

(Testimony of Mrs. Ethel Steele.)

the rapid roller that you speak of; a press copy?

A. I don't think so.

Q. Well, that is a copying ribbon, is it not?

A. Yes, that is a copying ribbon all right. It don't look to me like it had been copied.

Q. I also show you now Government Exhibit 160, case 3320, and No. 64 in case 3319, and I will ask you to state whether or not you did the typewriting on that instrument?

Mr. UELAND.—The same objection.

A. I don't think I did this typewriting.

Q. Was it done in the office there?

A. The type is just like one of our machines.

Q. I will ask you the same question in regard to that. (Showing witness Government Exhibit 159 in case 3320.)

Mr. UELAND.—The same objection.

A. I couldn't say whether I did this or not.

[760]

Q. Was it done in the office there?

A. I think I was away at that time.

Q. Has that been press copied and is it a copying ribbon?

A. It is a copying ribbon I think. I don't know whether it has been press copied or not.

Q. You think you were away when—

A. I believe I was away the date of that deed.

Q. The 10th of August, 1907? A. Yes.

Q. There is nothing to indicate on the deed though when the typewriting was done.

A. I suppose not.

Q. Wasn't that 1906 formerly, under the figure

(Testimony of Mrs. Ethel Steele.)

"7" there that has been put in—

A. I don't know as to that.

Q. There has been something under that there?

A. I don't know as to that.

Q. I will ask you to examine the acknowledgement on that instrument, Government Exhibit 159, and see if you can tell whether or not that was a "6" under the figure "7" (showing witness paper).

A. No, I couldn't tell.

Q. There is something else there; there is some other figure under it there?

A. There seems to be something.

Q. Are you able to give any reason why Government Exhibits 160 and 159 were not press copied, as well as Government Exhibit No. 155 and Defendants' Exhibit "C" and "D" for Identification?

Mr. UELAND.—The same objection.

A. Why, I suppose that is the way I have of doing, probably. Probably the other stenographer didn't do that. **[761]**

Q. You merely run it through and them you threw away the copy?

A. Sometimes I'd throw them away, and sometimes I keep them in my desk.

Q. Have you any recollection of destroying those? A. No.

Q. May they not be in the records of your office; in your files?

A. They might be in the office now.

Q. Have you ever looked for them? A. No.

Q. What did you do with those copies when you made them; that you made upon this machine?

(Testimony of Mrs. Ethel Steele.)

A. Sometimes I threw them away, and sometimes I keep them in my desk in case I would want to make a duplicate.

Q. What did you have that in the office for?

A. This machine?

Q. Yes. What use did you make of it?

A. Copying letters.

Q. And the letters that are copied; how do you keep them?

A. We file those away with the letters that we get. We answer them, and then pin these copies to the letters that we receive and file them away in our files. We have a vertical filing system.

Q. Is this tissue paper, the copying paper that is on this machine, perforated so that you can cut it off, or does it form a roll that you make and file itself?

A. It makes a kind of a big roll underneath the machine, and we cut it off.

Q. Cut them off as you make a record of them?

A. Yes.

Q. And file them in their proper places?

A. Yes.

Q. But where would you file copies of these things?

A. I would not have any place for those. **[762]**

Q. You have no file in your office for those?

A. I generally keep them in my desk. I have never been instructed to copy anything like that. I do it because the ribbon makes a blot on the paper. It is purely a notion on my own part.

Q. A matter of your own? A. Yes.

(Testimony of Mrs. Ethel Steele.)

Q. The body of these deeds that you drew here, where did you get that; do you know; do you recall that?

Mr. UELAND.—You mean the form?

Q. Yes, the form of the deed, outside of the description itself; do you recall how you got that at that time?

A. No, I can't remember whether it was dictated or whether I took it from the regular form.

Q. Somebody gave you instructions about making these; who did that? A. Mr. Trabert.

Q. (Showing witness paper.) I call your attention to exhibit 155 again; do you know who wrote "Linn County" on there?

A. That looks very much like my writing. I think it is.

Q. Do you know when you wrote that on there with reference to when it was bound up?

A. No, I could not remember that.

Q. Do you know whether you wrote that on there before you copied it or afterwards? A. No.

Q. What? A. I don't know. [763]

[Testimony of Charles L. Trabert, for Defendants.]

CHARLES L. TRABERT, a witness produced on behalf of the defendants, after being first duly sworn testified as follows in answer to questions by Mr. Ueland:

Q. Your name is Charles L. Trabert?

A. Yes, sir.

Q. How old a man are you? A. 39.

Q. And where do you live?

(Testimony of Charles L. Trabert.)

A. 3901, Lyndale Avenue North, Minneapolis.

Q. How long have you lived in this city?

A. 27 years.

Q. Continuously? A. Yes.

Q. What is your occupation or business, Mr. Trabert, at this time?

A. I am Secretary of the C. A. Smith Timber Company.

Q. How long have you held that position?

A. Since 1904.

Q. Were you previous to 1904 connected with any business of C. A. Smith, or with any company of Mr. C. A. Smith? A. I have been for 17 years.

Q. And is that during the 17 years last past?

A. Continuously, the last 17 years.

Q. Connected with his business, or the business of one or another of his companies?

A. Yes, sir.

Q. Where was the office of the C. A. Smith Timber Company—is that the company of which you are Secretary? A. Yes.

Q. Where was the office of that company in 1906?

A. In the Andrus Building. 411, Andrus Building, Minneapolis.

Q. Mr. Trabert, was your attention in May 1906, called to the fact that a corporation named the Linn & Lane Timber Company was organized?

A. Yes, sir.

Q. Was your attention called to that at the time of [764] its organization? A. Yes, sir.

Q. Do you know with what legal assistance that company was organized?

(Testimony of Charles L. Trabert.)

A. Governor Lind was our counsel I think in the organization of that company.

Q. Do you remember, Mr. Trabert, that in the month of May or early in June, 1906, there came to the office of the C. A. Smith Timber Company any papers connected with the incorporation of the Linn & Lane Timber Company? A. Yes.

Q. (Showing witness paper.) I show you a file envelope upon which is written the words "Linn & Lane Timber Company." Have you seen that before? A. Yes, sir.

Q. Do you know where that came from?

A. From the office of Lind & Ueland.

Q. And did any documents come in that envelope?

A. The documents connected with the organization of the corporation.

Q. Did those documents remain in that envelope?

A. They did.

Q. And where was the envelope and those documents kept from the time they were received?

A. Kept in a drawer in our vault that I have labeled "Corporation papers," in which we keep papers connected with all of our corporations.

Q. Up to what time was that envelope and the papers in it so kept at that place?

A. Until turned over to Lind & Ueland, approximately two years ago. I can't state the time.

Q. Was that about the time of the commencement of these suits? A. That was the time.

Q. (Showing witness paper.) I show you what purports to be a [765] receipt of the State

(Testimony of Charles L. Trabert.)

Treasurer of this State for the incorporation fee of that company, dated May 24th, 1906; was that kept there in that envelope with those papers?

A. Yes, sir.

(The paper shown witness was marked Defendants' Exhibit "N.")

Mr. UELAND.—Exhibit "N" is offered in evidence.

Q. (Showing witness paper.) I show you the original articles of incorporation, which I do not care to mark, as they are already in the record in this case, or a copy of them; was that kept in that envelope with those papers as you have stated?

A. Yes, sir.

Q. (Showing witness papers.) I show you certificate of incorporation, under the hand and seal of the Secretary of State of the State of Minnesota, dated May 31st, 1906, and which will be marked Defendant's Exhibit "O"; was that when received put in that envelope and kept with those papers?

A. Yes, sir.

Mr. UELAND.—It is offered in evidence.

Mr. McCOURT.—It is objected to as immaterial.

Q. (Showing witness paper.) I show you a certificate of the Secretary of State of the State of Oregon, dated June 25th, 1906, which the examiner may mark Defendants' Exhibit "P"; was that kept in that envelope with those papers? A. Yes, sir.

Mr. UELAND.—I offer that in evidence.

Q. Mr. Trabert, do you recall a meeting at the office of the C. A. Smith Timber Company, 411 Andrus Building, held by Mr. C. A. Smith, Mrs. Smith

(Testimony of Charles L. Trabert.)

and John Lind, in June, 1906? A. I do.

Q. You knew of such a meeting being held there at that time? A. Yes, sir. **[766]**

Q. (Showing witness papers.) I show you United States Exhibit 155, Defendants' Exhibit "C" and Defendants' Exhibit "D"; have you seen those documents before? A. Yes, sir.

Q. Are those three deeds signed by you as a witness? A. Yes, sir.

Q. And are you the Trabert who has signed the notarial certificate on each of them?

A. Yes, sir.

Q. Did you see Mr. and Mrs. Smith sign those documents? A. Yes, sir.

Q. Were those documents executed at the time they purport to be executed? A. Yes, sir.

Q. Were they executed before the time of that meeting I refer to, which appears in evidence to have been held June 9th, 1906? A. They were.

Q. After those documents were executed where were they kept; what was done with them?

A. In the corporation envelope—now, wait a minute; I catch your question; between the time of the execution and that meeting they were kept on my desk.

Q. Between the time of the execution and that meeting, they were kept on your desk?

A. That is my recollection.

Q. And where were they kept after that meeting?

A. In the corporation envelope.

Q. The same envelope that you have referred to?

(Testimony of Charles L. Trabert.)

A. Yes, sir.

Q. With the other documents? A. Yes, sir.

Q. You heard the testimony of Mrs. Steele?

A. A portion of it.

Q. Did you hear Mrs. Steele's testimony concerning the figuring up of the acreage and the consideration of each deed? **[767]**

A. I did.

Q. What is your recollection upon that subject?

A. I recall that I had Mrs. Steele figure the amount of acres in each one of those documents. The Linn & Lane Timber Company was incorporated for $100,000; I wanted to make the consideration of those deeds sufficient to cover the amount of the capital stock of the Linn & Lane Timber Company—

Q. That is, you wanted to apportion that consideration between—

A. Between the three counties.

Q. And in the three deeds? A. Yes, sir.

Q. So as to make the aggregate total consideration of the three deeds even with the capital stock of the company?

A. That was the intention.

Q. That was the object of the figuring and apportioning of the consideration? A. Yes, sir.

Q. And why did you want the consideration in the three deeds and the amount of capital stock to correspond?

A. Mr. Smith's idea was to turn these lands over to the Linn & Lane Timber Company in consideration of the stock of the company.

(Testimony of Charles L. Trabert.)

Q. And was that the reason for making the aggregate consideration of the three deeds equal the amount of the capital stock of the company?

A. That was the reason.

Q. It appears in the testimony already taken in this case by the admission of counsel that Vernon A. Smith is the son of Mr. C. A. Smith; that is a fact? A. Yes, sir. **[768]**

Q. How old a boy is he, about?

A. I think he is 22. I can't recall exactly. 21 past.

Q. About that? A. About that.

Q. Where is he now?

A. At New Haven, Connecticut.

Q. Attending college? A. Attending Yale.

Q. You of course knew him in 1906?

A. Yes, sir.

Q. (Showing witness book.) I call your attention to the minutes of the first meeting of the incorporators of that company; those minutes are in evidence; especially to those of the meeting of the incorporators and directors on June 9th, 1906; will you state in whose handwriting those minutes are?

A. In Vernon Smith's.

Q. Do you remember the occasion of his entering those minutes? A. Vividly.

Q. Where was he doing the work?

A. In my office.

Q. Why did you use the word "vividly"?

A. He immediately demanded the $10.00 due for the writing of the minutes in there.

(Testimony of Charles L. Trabert.)

Q. The by laws provide that the secretary shall get $10 for a meeting? A. Yes, sir.

Q. And that was probably the first work that the young man did in the way of business around there?

A. I think it was.

Mr. UELAND.—At this time I will offer in evidence defendants' exhibits heretofore marked for identification, "C" and "D."

Q. (Showing witness papers.) Mr. Trabert, state if you know in whose handwriting the endorsement on the outside of these three deeds is? Each reads, "Deed, C. A. Smith & Wife to Linn & Lane Timber Co." One reads, "Linn County, Oregon," the other "Lane [769] County, Oregon," and the third "Douglas County, Oregon."

A. That is all my handwriting. The ink.

Q. What is in pen and ink I mean.

A. Yes, sir. I did not write the "Frederick A. Kribs," on the Lane County one. The ink at the bottom.

Q. I refer to what is written on the top; the endorsement at the top on the outside.

A. At the top, the ink is my writing.

Q. Mr. Trabert, at the time that you received from the office of Lind & Ueland the envelope and incorporation papers referred to, did you or did you not receive the record book which we have here before us, and which is already in evidence, of the Linn & Lane Timber Company? I mean the book itself; the blank, with the blanks for corporation stock?

(Testimony of Charles L. Trabert.)

Mr. McCOURT.—That is objected to as immaterial.

A. It is my impression I did, but the Governor may have brought it over when he came to that meeting.

Q. Well, have you seen that record book before? It is here now before the examiner.

A. Yes, sir.

Q. Where was that book kept, if you know, after the meeting referred to of June 9th, 1906?

A. On a particular shelf in our vault set aside for our corporation minute and stock books.

Q. Calling your attention to the stock record there, I will ask you whether any of the certificates of stock, outside of the signatures, were made out by you? A. In full by me.

Q. Both upon the stub and in the body of the certificate? A. Yes, sir. **[770]**

Q. Is that true of certificates Nos. 1, 2 and 3?

A. Yes, sir.

Q. Six? A. Yes, sir.

Q. Seven? A. Yes, sir.

Q. Eight? A. Yes, sir.

Q. Nine? A. Yes, sir.

Q. Ten? A. Yes, sir.

Q. Eleven? A. Yes, sir.

Q. Twelve? A. Yes, sir.

Q. Thirteen? A. Yes, sir.

Q. Fourteen? A. Yes, sir.

Q. Fifteen? A. No, sir.

Q. Nor in those subsequent to fifteen?

(Testimony of Charles L. Trabert.)

A. Until those issued recently.

Q. Under whose direction was that work done by you; that is, this clerical work?

A. Mr. C. A. Smith's.

Q. Is that true as to the certificate No. 6, for 15 shares, to Charles J. Johnson? A. Yes, sir.

Q. Do you know what was the consideration for those 15 shares?

Mr. McCOURT.—I object to that as incompetent, irrelevant and immaterial, and for the further reason that no consideration passing for stock after the formation of the company and the issuance of the original stock, could have the effect of changing the original notice of the company as to the character of the title which it received to the lands in question, or any notice that it may have had of fraud in the acquisition of the title to the lands from the Government. **[771]**

Q. Just briefly state, if you know, what the consideration was.

A. Money and stock consideration.

Q. How much money, about, in round figures?

A. In the neighborhood of $21,000.

Q. And what stock?

A. 150 shares, as I recall it, in the C. A. Smith Timber Company of Minnesota.

Q. Do you remember, Mr. Trabert, whether certificate No. 7, assigned to Charles J. Swanson by C. A. Smith—do you remember whether you had anything to do with delivering that certificate to Mr. Swanson?

(Testimony of Charles L. Trabert.)

A. I had that in my hands, but I don't recall whether I personally gave it to Mr. Swanson, or whether some one else did.

Cross-examination.

(By Mr. McCOURT.)

Q. Who is Mr. Johnson?

A. Mr. C. J. Johnson is the Vice-president of the C. A. Smith Lumber Company.

Q. And how long has he been Vice-president of that company—is that C. A. Smith Lumber Company in Oregon or Minnesota?

A. In Minnesota.

Q. Is that a company that is doing business in Oregon? A. No, sir.

Q. How long did you say he had been Vice-president?

A. I can't tell you. Mr. Johnson was Vice-president for a period, and then left the company and came back afterwards, and has been Vice-president continuously now I should judge for seven years. **[772]**

Q. You say you kept those three deeds, Exhibit 155 in case No. 3320, and Defendants' Exhibits "C" and "D," in a package with the incorporation papers? A. Yes, sir.

Q. Have any other deeds in that package?

A. No, sir.

Q. Those were the only ones you had in there?

A. Yes, sir.

Q. Those are deeds from Smith to the Lumber company?

(Testimony of Charles L. Trabert.)

A. To the Linn & Lane Timber Company.

Q. To the Linn & Lane Timber Company?

A. Yes, sir.

Q. At the time that you claimed those deeds were delivered to the company the record did not show that Mr. Smith had any title to the lands at that time, did it? A. The Oregon record?

Q. Yes. A. I don't recall from memory.

Q. Don't you recollect that it showed the title in Nils O. Werner?

A. No, sir. I don't recall just what condition the title was in at that time.

Q. What did you do with the deeds that were later executed and delivered to Mr. Smith from Nils O. Werner, covering these lands?

A. Those deeds were kept, under my filing system, under the descriptions which were covered by those deeds.

Q. How did you happen to keep those under those descriptions?

A. Because these conveyed all the lands to the Linn & Lane Timber Company, and represented only their property. I could not keep all my title papers connected with the Linn & Lane Timber Company, or any of our other interests, in one envelope; so I have a filing case in which I keep all lands by the descriptions. The Werner deeds went there as I recall it, but these deeds covering all the particular tract were kept with the corporation papers, [773] naturally, being all their property.

Q. Yes, but the Nils O. Werner deeds covered all

(Testimony of Charles L. Trabert.)

of the land in Linn County held by the Linn & Lane Timber Company. A. But only led to these.

Q. Now the deeds from Nils O. Werner to Smith, Charles L. Trabert and wife to Smith, Holmberg and wife to Smith, and a number of other grantors, those were the deeds that actually sent the title into the Linn & Lane Timber Company?

Mr. UELAND.—I object to that as incompetent and calling for a legal conclusion.

A. They covered the lands, yes, sir.

Q. And they were the deeds, as you understood at the time of the record owners of the title to the lands?

Mr. UELAND.—The same objection.

A. The record owners, as I understood it.

Q. But yet you didn't file those deeds with the Linn & Lane papers at all.

A. No. No original papers were filed with the Linn & Lane papers, because the Linn & Lane deeds covered all of our holdings in Linn and Lane counties, and it would be impossible to file them with those deeds; otherwise it would take one box to cover all the descriptions in Linn & Lane counties. Each description is kept by itself, or bunch of descriptions, and all the title papers from the patent down to the present time are kept with those descriptions; but the deeds which conveyed all this property to the Linn & Lane Timber Company were kept with the corporation papers.

Q. And those deeds were made by Smith?

A. Yes, sir. **[774]**

Q. But the records or deeds passing the title

(Testimony of Charles L. Trabert.)

down to Smith you kept in a separate file?

A. Yes, sir.

Q. And they were executed a long time after?

A. Without reference to those documents, I don't remember when they were executed.

Q. And none of them were recorded?

A. No, sir.

Q. Why weren't they recorded; do you know?

Mr. UELAND.—That is objected to as not cross-examination.

A. Because we were purchasing in that district, and if it became known that Mr. Smith, or any of our interests, were interested in the buying of land there, naturally the timber would increase in price.

Q. How much land did you buy in Linn County after 1906?

A. I don't recall. I should judge several sections in the aggregate.

Q. Who from?

A. That I can't recall without reference to my records.

Q. Well, it was generally known that you did have large holdings in there, wasn't it, prior to 1906?

A. No, I don't think it was.

Q. Mr. Kribs was doing the buying out there, wasn't he?

A. Mr. Kribs was buying some timber there, yes, sir.

A. And it was generally known that he was in the market for timber up in that locality, wasn't it?

(Testimony of Charles L. Trabert.)

Mr. UELAND.—I object to that as not cross-examination.

A. I know nothing as to what was known as far as Mr. Kribs was concerned, out there. I have never been out there myself, **[775]** and was not at that time.

Q. Well, was that the reason you didn't put the deeds on record down in Lane County and Douglas?

A. Lane was such a small amount that it didn't cut any figure. The same reason in Douglas County.

Q. The same reason in Douglas County?

A. Yes, sir.

Q. What was the reason you offered some of the deeds for record in Douglas County some six months before you did in Lane County?

Mr. UELAND.—That is objected to, as not appearing, and that is not a correct statement, Mr. McCourt. You are mistaken in your premises.

Mr. McCOURT.—Well, he can correct it if I am.

Mr. UELAND.—I object to that as assuming a state of facts that does not appear, and also that it is improper cross-examination.

Q. (Showing witness papers.) I call your attention to a paper marked Government Exhibit 158, in case 3320, and Exhibit 62 in case No. 3319, purporting to convey a one-tenth interest in certain lands held by you in Linn, Lane, Coos, Curry and Douglas Counties, purporting to have been executed on the 23rd day of October, 1906, and showing a date of recording in Douglas County of March, 1908, and in Linn County September 9th, 1908; I will ask you

(Testimony of Charles L. Trabert.)

why it was that that deed was recorded in Douglas County in March, and not recorded in Linn County?

A. The reason for that was that we were contemplating at this time negotiating for a bond issue on certain of our lands, [776] amongst which many of our lands in Coos, Curry and Douglas County were included, together with lands in California; those lands were either intended to go in that trust deed, or did go into that trust deed, and that is why they were recorded.

Mr. UELAND.—They are other than the Linn & Lane Timber Company lands? A. Yes, sir.

Q. I also call your attention to a deed of J. E. Holmberg and wife to C. A. Smith, purporting to convey lands in Linn, Lane, Coos, Curry and Douglas Counties, showing a recording in Douglas County on the 12th day of March, 1908. (Showing witness paper.)

A. The same reason.

Q. The same reason as you gave for the latter?

A. Yes, sir.

Q. But you say the reason that you didn't record these other deeds in Linn County was to conceal the fact that C. A. Smith was interested in the lands?

A. Yes, sir.

Q. That covers both these cases?

A. Yes, sir.

Q. Now, I call your attention to a deed of F. A. Kribs and wife, dated October 24th, 1904, to Charles A. Smith, and to the fact that that was recorded in Linn County in January, 1905, about a year and

(Testimony of Charles L. Trabert.)

more before you ever organized the Linn & Lane Timber Company? A. Yes, sir.

Q. Well, what have you to say now as to the concealment, when you already had a deed on record showing that C. A. Smith himself owned that land?

A. We only owned a portion. Naturally the more land a man owned the more they would consider he would want to buy, and the higher the price would be. This was only a portion of the land. [777]

Q. Yes, it was only a portion of it, but it showed that he was a buyer in the district; that he was in there, and it would raise the price just as much as if he had 10,000 acres, wouldn't it?

A. No, sir. It depends on the buyer.

Q. Well, it shows that he was the buyer?

A. As I say, it was only scattering purchases, and would not raise the price. We have made investments of just a few thousand acres in different districts out there, and it had no effect on the price at all. It was known that we were not going in there heavily for a manufacturing proposition; but if it became known that we were gradually getting the lands from time to time in a district for a manufacturing proposition, the price would immediately soar, and it would be prohibitory.

Q. Well, didn't it appear that part of the lands in one of the cases, No. 3318, as well as those in No. 3319, had gone to Mr. Smith, which would show that he was in there? A. Some of them, yes.

Mr. UELAND.—It may be understood that the same objection applies to all of this, as being improper cross-examination and immaterial?

(Testimony of Charles L. Trabert.)

Mr. McCOURT.—Yes.

Q. You knew at that time, Mr. Trabert, in 1906, that practically all of the lands that were available in that district had been secured by you people; you had been buying in there for six years at that time, hadn't you?

A. Approximately that. About five years.

Q. Well, it was a little over six, wasn't it?

A. I don't recall just at the present moment when the first **[778]** lands were bought there.

Q. Bought there in April, 1900, weren't they?

A. I don't recall those lands.

Mr. UELAND.—The first Puter lands were bought in 1900?

A. Then it was six years.

Q. And yet you were afraid that it would be known that you were in the district?

A. Why, no. There are lands to be bought there to-day.

Q. Well, aren't you still afraid to record your deeds out there?

A. No, we were compelled to record them.

Q. When you talk about "we," and "our," you refer to the C. A. Smith Timber Company, I assume?

A. Or to the Linn & Lane Timber Company. I refer to any of Mr. Smith's interests.

Q. These papers were kept in the office of the C. A. Smith Lumber Company?

A. The C. A. Smith Timber Company.

Q. There is a C. A. Smith Lumber Company here as well? A. Yes.

(Testimony of Charles L. Trabert.)

Q. And its business is done in the office of the C. A. Smith Timber Company? A. No, sir.

Q. That is a separate concern and has a separate office? A. Yes, sir.

Q. How old did you say Vernon A. Smith was?

A. 21 is my impression. May be a year's difference.

Q. Then, at that time, at the time this corporation was organized, he was about seventeen?

A. Yes, sir.

Q. And he was a director of the company, was he? A. No, sir.

Q. One of the stockholders merely?

A. I think he was not a **[779]** stockholder even. He was an officer of the company.

Q. Without holding any stock?

A. Yes, sir.

Q. What officer was he? A. Secretary.

Q. Was that the reason for the articles of incorporation stating that it should not be necessary for the secretary to own any stock?

Mr. UELAND.—I object to that as incompetent, irrelevant and immaterial and not cross-examination.

A. Not particularly. Many of our corporations have reserved that authority; that right.

Q. Do you recall how many acres were deeded to Mr. Smith by Mr. Kribs in 1904? A. I do not.

Q. Do you recall how many acres Mr. Smith held in his own name out there in Linn County as early as 1904 and 1905? A. I do not.

Q. Several thousand acres in addition to those

(Testimony of Charles L. Trabert.)

included in these cases, were there not?

A. I couldn't say as to that. I have got the title papers in my office, but just what was in his name I couldn't say, although he had the equitable title to a great deal more than was in his name.

Q. He merely owned the equitable title to this entire 43,000 acres?

A. No, sir. I understood when he drew those deeds that he owned the lands that were deeded to the company. I had the deeds drawn under his instruction.

Q. You understood that he had the record title to them?

A. If he didn't have that it would be acquired.

Q. Well, didn't it occur to you that he could not have the **[780]** record title if he wanted to conceal the fact that he was going to be a buyer out there?

A. Not at all. I didn't say he had the legal title. I said he had to my mind the equitable title. He certainly didn't have the record title, if there was only a few thousand acres in the deed from Kribs recorded, and possibly a few more.

Q. You had the records before you; you were the custodian of the records of the office, were you not?

A. Yes, sir.

Q. And he didn't come out and dictate to you from the plats by metes and bounds any particular lands that you were to include in the deeds, but just told you he was going to transfer the title to all the lands in your files in Linn County to the Linn & Lane Timber Company?

(Testimony of Charles L. Trabert.)

A. He instructed me to make a deed for all of our lands in Linn & Lane Counties, and the particular description in Douglas County.

Q. How did you have the record of that; did you have it on plats, or did you have to go to the deeds?

A. No, sir; I had it on plats. I kept a record on the plats.

Q. Does your plat show in whom the title lies at the time?

A. No. I would have to look up the individual deeds and trace down the title.

Q. You don't recollect that you did that in this case? A. I know I didn't.

Q. You merely took the plats as you had them?

A. Exactly.

Q. Did you dictate these deeds to Mrs. Steele?

A. I don't know as I dictated them. I indicated what I wanted. **[781]**

Q. Gave her a form to go by?

A. Very probably, yes. The usual method.

Q. Do you usually press copy your deeds there?

A. Usually. Not always. There are two reasons for that; one reason is we use a copying ribbon, which will blur, and another reason is, occasionally the documents go out of our office, possibly go to the offices of our counsel, and until the matter is concluded we like to have a copy to refer to. After that, after we have no further use for them, we usually destroy them.

Q. You make these press copies for your own reference? A. Yes, sir.

Q. Do you recollect that you had press copies of

(Testimony of Charles L. Trabert.)

the deeds which have been offered in evidence here this morning?

A. I could not recollect that, we have so many.

Q. Exhibits "C" and "D," and Government Exhibit 155?

A. I would not be able to recall that.

Q. You don't have any record ribbons in your office at all? A. No, sir.

Q. No machine with record ribbons? Were you ever a stenographer? A. No, sir.

Q. Know anything about ribbons and typewriters?

A. Slightly, in connection with the business.

Q. (Showing witness paper.) I call your attention to Government Exhibit 155; will you look at your acknowledgement down there, the typewriting, and state whether or not that is not a record ribbon that wrote that?

A. No, that is a copying ribbon. **[782]**

Q. What makes you think so?

A. Can I show it?

Q. Yes, you bet you can. Show it if you can.

A. I think I will take that back. It don't look like—no I won't either. From that "S" I gather that is a copying ribbon.

Q. The other indications are not present, are they?

A. Well, yes, I think they are. See the blue where I put my thumb over it? Pardon the dirt.

Q. Do you see anything there but dirt?

A. Yes, I see some blue ink.

Q. Now, that is entirely different from this other

(Testimony of Charles L. Trabert.)

part of the deed?

A. Oh, yes, it is different. It is a different color. I can explain that. We use three typewriters in our office, and when one is busy I go over to another. One of my machines is a wide machine which we use when we need to make wide legal documents, and all the ribbons may not be the same color. Frequently that is left to the pleasure of the particular stenographer operating that machine, as to what ribbon she wants to use.

Q. Now, can you say whether or not the signature of Charles A. Smith upon that Government Exhibit No. 155 has been press copied?

A. It was not. Not press copied.

Q. (Showing witness paper.) I wish you would look at Government Exhibit 160 now, in case No. 3320, and state whether or not that is made by a copying ribbon; the typewriting?

A. Yes, sir.

Q. Is that a copying ribbon?

A. But this has not been copied.

Q. You don't know why I suppose?

A. No. Possibly the ribbon was old and it was not as likely to blur, or else it may **[783]** have been a rapid copying ribbon, which we used on our rapid roller process. Used both.

Q. What kind of machines do you use there?

A. This is a Remington.

Q. Are those others Remingtons too?

A. Yes, sir, all Remingtons. All Remingtons in my office.

Q. (Showing witness paper.) Now, look at

(Testimony of Charles L. Trabert.)

Government Exhibit 159 and state whether or not that is a copying ribbon too.

A. That is a copying ribbon.

Q. I wish you would make that test on those two. and see.

A. Of course this ink is very old, but I will get the heaviest. (Testing it.) That is a copy to my mind. You see it turns bluer. (Referring to Exhibit 160.) This is a copy. You see the blue ink down there mingled with the dirt. (Referring to Exhibit 159.)

The further taking of testimony in these causes was here adjourned until one forty-five P. M.

[784]

Thursday, June 9th, 1910, 1:45 P. M.

Met pursuant to adjournment.

Present, as before.

CHARLES L. TRABERT recalled.

Cross-examination (Resumed).

(By Mr. McCOURT.)

Q. I understood you to say, Mr. Trabert, that those deeds were made out prior to the 9th day of June, 1906? A. Yes, sir.

Q. Do you remember whether or not it was on the 4th day of June, or later than the 4th day of June?

A. It was the 4th day of June.

Q. Do you remember whether they were drawn, typewritten, the same day they were executed?

A. There was probably a couple of days consumed in the typewriting.

Q. Do you recall anything about Mrs. Steele having to postpone her journey out west on account of

(Testimony of Charles L. Trabert.)

the execution or making out of these deeds?

A. Yes, sir. She wanted to take a longer vacation that year, and we could not permit it on that account. I remember she was disappointed at the time.

Q. She didn't go until some time in July?

A. No, sir, she didn't go until some time in July.

Q. How many days were consumed in making these deeds?

A. Only a couple of days in making the deeds. Possibly we had been preparing them a week before. There were other reasons afterwards though that prevented her going on her vacation until July. She was quite ill I think for one thing. She was sick for some time.

Q. It wasn't the making of the deeds then that caused the **[785]** postponing of the trip?

A. Yes. She would have gone before. That was the reason that she could not go at that time.

Q. Gone before when?

A. She would have gone the 1st of June. That is what she wanted to do. During that time, even before the 1st of June, we had figured on this proposition, and were preparing for the deeds. The lands were checked on the plats, and had to be gone over carefully, and then from those plats she made the deeds. Of course it might have taken more than two days to do the typewriting. I don't recall just exactly the length of time.

Redirect Examination.

(By Mr. UELAND.)

Q. I forgot a matter that I should have asked

(Testimony of Charles L. Trabert.)

him before, if you don't object?

Mr. McCOURT.—That is all right.

Q. Mr. Trabert, the records of the Linn & Lane Timber Company already in evidence in this case show that Vernon A. Smith resigned as Secretary October 31st, 1908; that Nan Smith, now Nan Warner, resigned as treasurer about the same time; that Mr. Smith resigned as president about that time; that B. F. Nelson succeeded Mr. Smith as president, and that C. C. Wyman succeeded Vernon Smith as secretary and treasurer; the evidence already taken in the case shows that there was an annual report made to the Secretary of State of Oregon, concerning the Linn & Lane Timber Company, it states for year ending June 30th, 190—, but it is dated June 14th, 1909, and purports to be a report for the **[786]** year 1909. as to who are the officers of the company; that report, which is marked United States Exhibit 167 was signed by Vernon A. Smith; I will ask you to state, Mr. Trabert, whether you had anything to do with the preparation of that report?

A. Yes, sir, I prepared that with my other reports. For instance, the first of June I—

Q. Just don't go any further. You prepared it?

A. I prepared it.

Q. Did you prepare it about the time it purports to have been made, June, 1909? A. Yes, sir.

Q. Will you please explain the discrepancy between that report and the records of the corporation as to who were the officers of the corporation in 1909; how that discrepancy came about in your report?

(Testimony of Charles L. Trabert.)

Mr. McCOURT.—That is objected to as immaterial.

A. The first of June, or about the first of June, the Secretary of State of Oregon sends me a statement that our corporation taxes are due; we have four or five corporations in Oregon; that do business in Oregon; when those came I made them all out, to my best memory, and returned them, but at that time the Linn & Lane Timber Company books were out of my hands; they had been turned over to the Northwestern National Bank, and as a matter of fact I was not conversant with who the officers were.

Q. That is the way the mistake came to be made?

A. Yes, sir. **[787]**

Recross-examination.

(By Mr. McCOURT.)

Q. You never were an officer of that company, were you? A. No, sir.

Q. How did you get the statement; how did they happen to send it to you?

A. Because I have been looking after that part of Mr. Smith's business.

Q. Were they sent to you at all?

A. They were sent to the C. A. Smith Timber Company's office, addressed to the Linn & Lane Timber Company, and would naturally come to me.

Q. Came to the office? A. Yes, sir.

Q. And you got them? A. Yes, sir.

Q. And you prepared this report without looking at the records of the corporation? A. Yes, sir.

Q. And it had escaped your mind that Nelson and Wyman had become officers of the company in-

(Testimony of Charles L. Trabert.)
stead of Smith and Vernon Smith?

A. Yes, sir. While I was cognizant of it, in making out all these reports together it simply escaped my mind.

Q. Where did you say the records were?

A. In the hands of the Northwestern National Bank of Minneapolis—now, let me explain; possibly at that time they were in the hands of the Swedish-American National Bank. The Swedish-American National Bank sold out to the Northwestern National Bank, and that is where they are at the present time. It was one or the other of those two banks.

Q. Well, they are here largely at the present time, aren't **[788]** they?

A. I beg pardon.

Q. I say the records are here, are they not, largely, at the present time?

A. Yes, sir, they are here now. I could tell from those records where they were.

Q. Who is Secretary of the company now?

A. I am.

Q. Aren't you supposed to have the custody of the records?

A. I have the custody at the present time.

Q. What?

A. I have the custody of their minute-book and stock-book at the present time.

Q. Who does the record show was secretary in 1909?

Mr. UELAND.—C. C. Wyman.

Q. Where is Mr. Wyman's office?

A. Mr. Wyman's office is in the Chamber of

(Testimony of Charles L. Trabert.)

Commerce, Minneapolis.

Q. Didn't he have the custody of the record?

A. No, sir, he never had the custody. He was simply—while he was secretary he was a trustee for the bank, and the bank had the custody.

Q. When were those records delivered into the custody of the bank?

A. I would have to refer to the records. Early in 1908, I think.

Q. I wish you would refer to that record and tell us when it was. (Showing witness record.)

A. October 31st, 1908.

Q. Up to that time they had been in your possession? A. Yes, sir.

Q. Not as an officer of the company, but as a clerk of the C. A. Smith Timber Company?

A. Exactly.

Q. Vernon A. Smith never assumed to have the control or custody of these records?

A. That was his office. [789]

Q. What say? A. That was his office.

Q. That was his office? A. Yes.

Q. But you were the man who actually controlled— A. No.

Q. And had the custody of the records?

A. He had them. When he had occasion to use the minute-book he went into the vault and took it out himself and put it back himself.

Q. Are any of those minutes in his handwriting except those first ones?

A. Oh, yes. They are all in his handwriting until this year. That is my recollection. All in

(Testimony of Charles L. Trabert.)

Vernon Smith's handwriting up to and including January 14th, 1908.

Q. After that they are in somebody else's?

A. Yes, sir, either Mr. Wyman's or in my own. From October 31st, 1908, they are either in my handwriting or Mr. Wyman's. Signed by the Secretary at that time, whoever it was. Well, I was Secretary at that time, October 31st, 1908. I was Secretary of the company.

Q. You did the writing then?

A. Yes, sir, I did the writing then.

Q. When were you elected secretary?

A. In—

Mr. UELAND.—You are mistaken about that I think.

A. Am I mistaken about that? I was secretary for that particular meeting, but I was not secretary. Mr. Wyman was secretary I think at that time, or Vernon was secretary at that time still. Mr. Wyman was.

Mr. UELAND.—Then you were acting secretary?

A. I was acting secretary of that meeting. That is why I signed the minutes.

Q. Then the first of the following year you were elected **[790]** secretary?

A. No, Mr. Wyman was secretary then, and has been until a month ago.

Q. And the custody of the records was in Mr. Wyman until about a month ago?

A. Yes, sir, within the last month.

Q. When there has been a new election of officers? A. Yes, sir.

(Testimony of Charles L. Trabert.)

Q. They then passed out of the cusotdy of Mr. Wyman and the bank? A. Yes, sir.

Q. Back to you? A. Yes, sir. **[791]**

[Testimony of Edgar L. Mattson, for Defendants.]

EDGAR L. MATTSON, a witness produced on behalf of the defendants, after being first duly sworn, testified as follows in answer to questions by Mr. Ueland:

Q. Your name is Edgar L. Mattson?

A. Yes, sir.

Q. You live in Minneapolis?

A. Yes, sir,—well, my legal residence is Lake Minnetonka.

Q. That is a suburb of Minneapolis?

A. Yes.

Q. You have lived in this state and at or around Minneapolis for about how many years?

A. Over 30; 34 years.

Q. What is your present occupation?

A. Assistant Cashier of the Northwestern National Bank.

Q. Of this city? A. Yes.

Q. How long have you held that position?

A. Since November 28th, 1908.

Q. What position did you hold previous to that date, if any?

A. I was and am cashier of the Swedish-American National Bank of Minneapolis.

Q. And how long had you been cashier of the Swedish-American National Bank of Minneapolis previous to November 28th, 1908, about?

(Testimony of Edgar L. Mattson.)

A. Eight or nine years, I think.

Q. Was there a business transaction between the Swedish-American National Bank and the Northwestern National Bank on or about November 28th, 1908? A. There was.

Q. What was the nature of it?

A. A contract whereby the Swedish-American National Bank sold to the Northwestern National Bank its deposits, and the Northwestern assumed them.

Q. In that transaction that you refer to of November 28th, **[792]** 1908, did the Northwestern National Bank take and receive from the Swedish-American National Bank all the obligations which the Swedish-American National Bank held at that time against Mr. C. A. Smith and against Mr. C. J. Johnson? A. Yes, sir.

Mr. McCOURT.—I object to that question, and move to strike out the answer of the witness, for the reason that it is immaterial and irrelevant, and for the further reason that any title to the stock—any title or right in or to the stock of the Linn & Lane Timber Company, or any obligations of said company acquired by the Swedish-American National Bank would be taken wholly subject to any notice or knowledge of fraud coming to the company relative to the property acquired by it which might be an asset for the payment of the obligations acquired by the bank; and for the further reason that the owners or holders of the stock of the Linn & Lane Timber Company would acquire no greater title to the company's property than the company itself had. If it

(Testimony of Edgar L. Mattson.)

had none, the stockholders would acquire none.

Mr. UELAND.—I will ask Mr. McCourt whether he desires to raise any point about it not being the best evidence?

Mr. McCOURT.—Oh, no, not at all.

Mr. UELAND.—For we can produce the contract by which the transfer was made, if the counsel should care to have that, as the best evidence; but you say you don't raise that question?

Mr. McCOURT.—No, I will waive that. I merely object to the materiality and relevancy of the testimony.

Q. Did the Northwestern National Bank at the same time receive the security that the Swedish-American National Bank held **[793]** for that indebtedness of C. A. Smith and C. J. Johnson consisting in part of the stock of the Linn & Lane Timber Company?

Mr. McCOURT.—The same objection.

A. It did.

Q. You say it did? A. Yes.

Q. State whether or not the Northwestern National Bank has since that time continued to hold that security. A. It has.

Q. And does the bank hold it now?

A. It does.

Q. There is already in evidence in the case a contract between the Swedish-American National Bank on the one side, and C. A. Smith and C. J. Johnson on the other side, dated October 31st, 1908, marked Defendants' Exhibit "I," a contract by which a majority of the stock of the Linn & Lane Timber

(Testimony of Edgar L. Mattson.)

Company was pledged to the Swedish-American National Bank; in that contract it stated, in substance, that the aggregate of Mr. Smith's obligations to the Swedish-American National Bank at that time, October 31st, 1908, was $337,240.45; will you please state whether or not that was as a matter of fact the aggregate amount of his obligations to the bank at that time?

A. I will have to refer to the books for that.

Q. Refer to your papers so as to be able to answer the question.

Mr. McCOURT.—I want to raise the same objection to that.

A. (Referring to papers.) Well, I figure up $333,000 in my hurry. I would have to take and check it. The contract had an absolute detail of what that indebtedness was, and I think there is also another $3,000. I think I make it $336,000 here.

[794]

Q. Well, the exact amount is not material. Can you say from the examination you have given now, that the indebtedness was in excess of $330,000?

A. Yes.

Q. Mr. Mattson, the contract between the Swedish-American National Bank and C. A. Smith and C. J. Johnson, of October 31st, 1908, already referred to, gives the aggregate of Mr. Johnson's obligations to the bank at the time when that contract was made as $56,450.00; will you please state if that is the correct amount of his obligations at that time to the bank? A. It is.

Q. Or was? A. Was, yes.

(Testimony of Edgar L. Mattson.)

Q. Have you at my request, Mr. Mattson, within a day or two, examined the books and papers in the Northwestern National Bank with a view of ascertaining the aggregate amount of the obligations of C. A. Smith which came to the Northwestern from the Swedish-American, as you have testified, still remaining unpaid?

A. I have, with the aid of a clerk. I have not seen all the records myself.

Mr. McCOURT.—I object to all these questions as immaterial.

Mr. UELAND.—Not as not the best evidence?

Mr. McCOURT.—Oh, no.

Q. What is the amount of those obligations which is unpaid, in the aggregate?

A. $143,714.95, as maker and endorser.

Q. Have you made a similar examination with a view of ascertaining the aggregate amount of C. J. Johnson's obligations still unpaid of those which came to the Northwestern from the Swedish-American? A. I have. **[795]**

Q. What do you find to be and what is the aggregate amount still unpaid upon those obligations?

A. $42,950.00 as maker and endorser.

Q. Mr. Mattson, have you within a day or two at my request examined the books of the Swedish-American with a view of ascertaining the aggregate amount of Mr. C. A. Smith's obligations to the Swedish-American National Bank on February 14th, 1908? A. Yes.

Q. And what was the aggregate amount of his obligations at that time?

(Testimony of Edgar L. Mattson.)

A. Now, Mr. Ueland, excuse me a moment; I probably misunderstood your question. When I gave you those figures of $330,000, I was under the impression you asked me as of the date of February 14th; was that the date you asked me?

Q. Yes.

A. Then, you are asking me this question now the same thing?

Q. No, you testified as to the amount—

A. Oh, yes, I know now, of course. I got this evidence mixed up. I will have to correct this. I will have to refer to that. I have been giving you those figures before as of February 14th. I understood you to ask me for that.

Q. No, I said October 31st.

A. Well, I was mixed up on that. I will have to change that evidence around, because it is not correct. You are asking me for three different dates?

Q. Yes.

A. Oh, I took your second question as your third.

Q. Oh, I see. When you testified there was $330,000 or upwards of obligations on the part of C. A. Smith to the Swedish-American **[796]** National Bank, you referred as of February 14th, 1908? A. I did.

Q. And as to the amount of those obligations on October 31st, 1908, when the contract pledging additional securities was given, you can say, I understand, that that amount was what was recited in the contract? A. Yes, sir.

Q. That the contract states the amount correctly?

(Testimony of Edgar L. Mattson.)

A. Yes, sir.

Q. And the same is true about Johnson's obligations? A. Yes, sir.

Q. I think that makes the correction.

A. Yes.

Cross-examination.

(By Mr. McCOURT.)

Q. What is this record from which you gave the figures mentioned?

A. What the book is called?

Q. Yes. A. The Liability or Line Book.

Q. Of the Swedish-American National Bank?

A. Yes, sir, of the Swedish-American National Bank.

Q. Which has been amalgamated or absorbed by the Northwestern National Bank?

A. Yes, sir, the Northwestern National Bank of Minneapolis.

Q. And what is this Lauritzen Malt Company?

A. A company manufacturing malt.

Q. Johnson and Smith interested in that?

A. Yes.

Q. Mr. Smith endorsed the notes of that company? A. Some of them. **[797]**

Q. And Johnson endorsed some of them?

A. Yes.

Q. And some are not endorsed?

A. Not endorsed by either of those two.

Q. Nor by anyone else, were they?

A. Yes, they were.

Q. You don't seem to have a record of it; what

(Testimony of Edgar L. Mattson.)

some of them?

A. Well, I can't answer that question positively.

Q. Well, if there was any endorser you would have a record of the endorser in this line of particulars?

A. We may have had a guaranty. I rather think we did.

Q. Now, the liability of Smith as endorser and of Johnson as endorser for this Lauritzen Malt Company are included in your list of liabilities of Smith?

A. Yes, sir, as endorsers.

Q. Which you understand were secured by some of the stock of this Linn & Lane Timber Company?

A. Yes, sir.

Q. As collateral or as a pledge? A. Yes.

Q. I notice you have here among these sheets what appears to be a list of liabilities of the Swedish Printing Company? A. Yes, sir.

Q. Mr. Smith an endorser on some of their paper?

A. Mr. Smith was the signer of a guaranty of their paper.

Q. To what extent?

A. $4,500 or $5,000. The amount that they loaned. We didn't loan beyond the amount of the guaranty.

Q. Well, I don't catch that in this record.

A. (Referring to papers.) Well, here the company owes money as maker; now you are going back in 1906; if you want to get at the date, about the time, I will show you; here in 1908, March, April and

(Testimony of Edgar L. Mattson.)

so on, the company owes $4,500. [798]

Q. You think Mr. Smith guaranteed that?

A. Oh, yes, I know it. We had the principal stockholders of that company sign the guaranty.

Q. Had he been guarantor for some years of their business?

A. Ever since that paper was bought by that corporation.

Q. I understood you to say a while ago that the amount of his liability on that Lauritzen business was probably $13,500. A. I beg pardon.

Q. I understood you to say awhile ago that the amount of his liability on the Lauritzen Malt Company paper was about $13,500. A. Yes, sir.

Q. On October 31st, 1908? A. Yes.

Q. Referring to the page of the liability record of the Swedish-American National Bank, purporting to show the account of C. A. Smith, there appears under the heading "Particulars" the names of a great many persons and corporations; were they endorsers with Mr. Smith, or was he guarantor of their liabilities, or what does that purport to show?

A. The particulars, purport to show the maker of the obligation; the signer of the note.

Q. What?

A. The signer of the note on which he was an endorser.

Q. Well, it does not show then, the particulars, that Mr. Smith as endorser was the actual endorser under that account there for all the different notes?

A. Yes, it shows it.

(Testimony of Edgar L. Mattson.)

Q. Where is that? I refer now to the names down here under the title "Particulars."

A. There is a note of the Mereen [799] Johnson Manufacturing Company. This is Mr. Smith's liability. This column refers to his liability as maker, and this one as endorser. This particular note is $2,000. That shows that it was the Mereen-Johnson Machinery Company endorsed by C. A. Smith. Here, for instance, is a note of John E. Holmberg, for $5,000, which shows that Mr. Smith is an endorser, because it is in the endorser column.

Q. Where did you get Holmberg's part of the transaction; did you have a separate sheet for him?

A. No.

Q. The bank understood then that this was Mr. Smith's liability?

A. We looked to Mr. Smith for payment of it if Mr. Holmberg failed to pay it.

Q. But supposing you wanted to look up Mr. Holmberg's account, where did you carry his liability?

A. Carried it on Smith's, because he was the endorser of the paper.

Q. Well, did you have a sort of a mental scheme of book-keeping there? Supposing you wanted to get the Holmberg account?

A. We had no Holmberg account. We knew that all Holmberg paper was endorsed by Smith.

Q. You did? A. Yes, sir.

Q. And that it was Smith's liability?

A. Yes, as an endorser.

(Testimony of Edgar L. Mattson.)

Q. Well, you looked to Smith primarily for the money?

A. No, not primarily. We looked to the maker of the note primarily.

Q. Where was Holmberg living at this time?

A. Denver.

Q. Engaged in business here; have some business interests [800] here?

A. No, he had been here formerly.

Q. What business was he engaged in?

A. Contracting and building of flats.

Q. Now, this Mereen-Johnson Machine Company; is that a local concern? A. Yes, sir.

Q. You looked to Mr. Smith as endorser upon that? A. Yes, sir.

Q. Well, at this time, October 31st, 1908, as these several notes became due, they hadn't defaulted; payment wasn't defaulted on them?

A. No, I think not.

Q. Was their additional security demanded at the time of the change of banks?

A. No, there was no change in collateral on account of the change in the banks. The Northwestern took over the exact collateral that the Swedish-American formerly held.

Q. You don't know anything about, or rather the new bank had nothing to do with the change of collateral? A. The change of collateral?

Q. If there was any change; had there been any change?

A. You refer to the $400,000 worth of bonds be-

(Testimony of Edgar L. Mattson.)

ing surrendered?

Q. I understood there was something surrendered.

A. It was all Swedish-American Bank business. The Northwestern holds the collateral to-day in the same shape as it was when the Swedish-American passed it over to them.

Q. Now, prior to October 31st, 1908, had the Swedish-American National Bank held any security on these notes of Holmberg, the Lauritzen Malt Company, the Mereen-Johnson Machine Company, and the other notes upon which Mr. Smith was endorser, beyond the liability [801] of the makers themselves and the endorsement of Mr. Smith?

A. Yes, sir.

Q. What had it held?

A. The C. A. Smith Timber Company bonds.

Q. Securing these same endorsed liabilities?

A. Yes, sir, all of his liabilites.

Q. You don't show the collateral upon this page, do you? A. No, sir.

Q. What have you as to collateral; a record of the collaterals?

A. There were memorandums shown in the envelope that contained them, and there may be in our files some records, lists, etc. Nothing incorporated in the Line book that has to do with that.

Q. Do you recall at this time whether or not you have any list of collaterals which you held of Mr. Smith's at that time?

A. I think we have. I think there are lists.

(Testimony of Edgar L. Mattson.)

Q. Could you get those readily?

A. Yes. I will say in answer to your question that the Swedish-American Bank has been out of business for a year and a half, and that I have simply picked up the things that Mr. Ueland thought you wanted, and I haven't the stuff at hand to give you anything you may ask for. I can't do it now, but I can get it if you will give me time.

Q. I wondered if you could get it in a little while?

A. Oh, yes, it won't take long.

Q. Now, I find by referring to the sheet of the C. A. Smith Lumber Company liabilities, that it shows the lumber company liable in quite a large amount as maker; no record of an endorser at all; would you regard that as Mr. Smith's liability?

A. Yes, sir. [802]

Q. And you took collaterals to secure that?

A. Yes, sir.

Q. His personal collateral?

A. Yes. He was personally liable on that paper.

Q. Was he an endorser on it?

A. He was an endorser or a guarantor.

Q. I wish you would look at that liability record there and see what it shows.

A. (Showing witness papers.) It shows that this is the line of the C. A. Smith Lumber Company.

Q. It does not show whether he is on there as endorser or not?

A. This is not the original record of the notes. I took these line sheets up here because I thought you wanted to know the amount. If you want to go into

(Testimony of Edgar L. Mattson.)

the details as to it I can go back to the discount register that has every note registered, and shows the dates, amounts, maturities, etc., all C. A. Smith Lumber Company paper being guaranteed personally by Mr. Smith, and always has been, every piece we have ever had.

Q. What I am getting at is this; here is one record that shows an endorser as endorser; there is one that does not show anything; still you say it is the same thing.

A. Well, for instance in this case it was Mr. Smith personally that issued his personal notes, and sundry notes that he was an endorser on of people like Holmberg, Mereen-Johnson, and various concerns that didn't borrow to any extent, or were not depositors in the bank. Then we made special sheets for such concerns as the C. A. Smith Lumber Company, and C. A. Smith Timber Company, whose transactions were numerous.

Q. And on those you didn't note whether they were endorsers **[803]** or guarantors?

A. We considered it the same thing. In the back of this book we had a sheet on which it showed; a memorandum there showed every separate account in this book on which Mr. Smith was liable; it was listed on that sheet, and any time we wanted to know how much he was liable for we turned to that list.

Q. Why didn't you bring that?

A. Well, I pulled out the sheets that I have got, and I didn't bring the list. That is all there is to it. I could easily bring it. That list gives you a list of these sheets.

(Testimony of Edgar L. Mattson.)

Q. Now, I find the liabilities of the C. A. Smith Timber Company in the same condition as the C. A. Smith Lumber Company. A. Yes, sir.

Q. And on that he was personally liable you think as endorser? A. Yes, sir.

Q. Or guarantor? A. One or the other.

Q. Did you hold any collateral with that except this Linn & Lane Timber Company?

A. The bonds before referred to, the C. A. Smith Timber Company bonds, which were exchanged for this stock.

Q. You speak of the C. A. Smith Timber Company bonds? A. Yes.

Q. They were surrendered?

A. They were surrendered in exchange for this new collateral which we have been referring to.

Q. Were they retired at that time or merely exchanged? A. Exchanged.

Q. Did you hold them then in connection with something else?

A. For the same purpose.

Q. You had formerly held them to secure this indebtedness? [804] A. Yes.

Mr. UELAND.—I think he misunderstood you, Mr. McCourt. Whether they continued to hold the bonds after they had exchanged them; is that the question?

Mr. McCOURT.—No. I merely asked him if he did hold them for some other purpose after that. He said he exchanged them, and I would assume by that that they surrendered them to Mr. Smith.

(Testimony of Edgar L. Mattson.)

The WITNESS.—Yes, sir.

Q. How much of those C. A. Smith Timber Company bonds have you been holding?

A. I will have to refer to my minutes. (Referring to papers.) I think it was 430 or something of that kind, $400,000.

Q. I find here also liabilities of Johnson & Company of White Rock, South Dakota, as makers upon notes; a number of notes; did you include the liabilities of the latter company as those of Smith?

A. Yes, sir.

Q. Where do you find Smith's obligations on that record?

A. Mr. Smith was the signer of a guaranty bond guaranteeing that paper.

Q. Was that this same C. J. Johnson?

A. Johnson & Company of White Rock were a corporation.

Q. Is that this same Johnson; C. J. Johnson?

A. He is interested in there. I presume it is named after that Johnson. I am not sure whether it is that Johnson or another one. We have a good many Johnsons around here.

Q. There is nothing upon this record to show Mr. Smith's liability there? A. No. **[805]**

Q. You testify to that from your own recollection?

A. I have brought you the sheets of all of that paper that he was liable on, which I have gathered together from memory, and from the list in the book that I referred to before.

(Testimony of Edgar L. Mattson.)

Q. I find S. E. Oscarson & Company, showing that company liable upon a number of notes; nothing there to indicate the connection of Mr. Smith with the sheet or with the notes.

A. Not on that sheet; no, sir.

Q. I understand from you that he was liable upon all these notes too?

A. He was. He was the signer of a guaranty bond.

Q. By which he guaranteed payment in case of the default of the maker? A. He did.

Q. Who is Oscarson & Company?

A. It is a corporation of White Rock, South Dakota.

Q. You understood Mr. Smith to be interested in that? A. I do.

Q. Do you also understand him to be interested in Johnson & Co.? A. I do.

Q. What was the business of those two corporations?

A. Johnson & Company, I think, is a mercantile concern, and Oscarson is in the grain business; a grain elevator and agricultural implements I think.

Q. I notice that these liabilities extend to as late as November 23d, 1908; when was it that the Northwestern National Bank took over the business of the Swedish-American? A. November 28th, 1908.

Q. A few days after these obligations were made, November [806] 23d, 1908?

A. Yes, a few days after that particular note was made, but that is a renewal of one that matured just

(Testimony of Edgar L. Mattson.)

ahead of it. This note was taken November 23d, 1908, and it paid one for a like amount which had been taken on October 26th, 1908, and that in turn was a renewal of one that preceded that, and so on.

Q. In reaching the amount of Mr. Smith's liabilities on these several sheets, did you refer to the date October 31st, 1908, to ascertain that, or can you ascertain from each column?

A. The list that I had here, I was taking it as of the date February 14th. My evidence regarding the other, I substantiate the contract which I at that time knew to be correct.

Q. You didn't attempt to figure it up here?

A. No.

Q. For instance, on October 31st, 1908, what was Mr. Smith's liability upon this sheet of Oscarson & Company? A. $9,000.

Q. That $9,000 was the liability at that time?

A. Of the Oscarson & Company.

Q. Those preceding it had been extinguished. Those entries preceding, all notes preceding the date of October 31st, 1908, do I understand you had been cancelled and settled; paid?

A. The notes that we held on October 31st, amounting to $9,000, represent renewals of the notes that were in our hands on previous dates. I would have to follow out the line on each particular note to find when it originated, if that is what you desire.

Q. No, I don't care about that. Now, I look at the list of liabilities of the Northwestern Compoboard Company, and I find that they incurred a num-

(Testimony of Edgar L. Mattson.)

ber of liabilities to the bank as [807] maker, and the sheet contains no indication that there was any endorser, or guarantor or anything else.

A. Mr. Smith was liable on that paper as endorser or guarantor.

Q. Well, if he was an endorser you would have indicated it there, would you not?

A. No. I stated before that I had a complete list in the back of the book showing the separate lines on which he was liable.

Q. I understand you have a list in the back of the book, but some of these sheets here contain a memorandum that he is an endorser, and others do not.

A. That list showed Mr. Smith's own sheet.

Q. As endorser and maker?

A. Yes, and then the additional sheets of the concerns on which he was liable.

Q. Yes, but the C. A. Smith sheet does not attempt to show this.

A. No. There were so many transactions we gave them separate sheets.

Q. What I am trying to get at is, it appears that at one time you kept your books or your sheets showing a memorandum of the fact that he is an endorser, and in others on which you say he may be an endorser you don't indicate.

A. The sheet itself does not show it, no.

Q. Some of these sheets do show it?

A. The only sheet that shows it is his own sheet.

Q. Well, this malt company shows it too, don't it?

(Testimony of Edgar L. Mattson.)

A. Well, the reason for that is that the malt company line had notes with different endorsers; they were all endorsed by the manager of the corporation, Mr. Maunsell, some of them were **[808]** endorsed by Mr. Smith, some of them were endorsed by Mr. Johnson, some of them were endorsed by Mr. Amsden, and in some cases Amsden and Johnson were joint endorsers.

Q. Was that the reason for indicating it?

A. The reason that Smith's name is indicated on the Lauritzen sheet is on account of the list showing Smith's liability. That distinguished the notes on which he was liable only.

Q. Now, I wish you would just tell the reporter how much Mr. Smith was liable for personally there, and not as endorser or guarantor?

A. Your question is on notes on which he was maker?

Q. Yes, on which he was maker.

A. At what time, Mr. McCourt?

Q. Well, on February 14th, 1908, and on October 31st, 1908, and on November 28th, 1908.

A. On February 14th, 1908, he was liable as maker in the sum of $68,540; on October 31st he was liable as maker for $68,540.

Q. November 28th?

A. November 28th, $19,721.18.

Q. Was he an officer, or do you know, of this Lauritzen Malt Company?

A. I think he was not an officer.

Q. A stockholder? A. A stockholder.

(Testimony of Edgar L. Mattson.)

Q. Do these minutes anywhere show—I refer to the minutes of the Swedish-American National Bank—show the acquisition or delivery to the bank of the $400,000 in bonds of the C. A. Smith Timber Company? A. I think not.

Q. Do you remember whether or not there was a collateral agreement of pledge, or of collateral, with that $400,000 of C. A. Smith bonds?

A. There was.

Q. Have you got that here?

A. I don't know. It may be in [809] the custody of the Northwestern National Bank; it may be in some of the old files. I couldn't say. We took a general pledge from every borrower who put up collateral.

Q. A pledge of security? A. Yes.

Q. That is, you took a written pledge; was it a printed form? A. A printed form, yes.

Q. Did you have a printed form in this case?

A. I think so.

Q. Showing what it secured?

A. No, it didn't specify what it secured. It secured any and all indebtedness of the maker or endorser. It was a general form of collateral agreement. We used those in all instances.

Q. You have authority under those to use any collateral in your possession? A. Yes, sir.

Q. For the payment of any obligation to the bank? A. Yes, sir.

Q. You do take special collateral contracts sometimes, don't you?

(Testimony of Edgar L. Mattson.)

A. If we took real estate or something of that kind we would.

Q. Do you still hold that stock as collateral; that same stock?

A. What stock do you refer to?

Q. The Linn & Lane Timber Company.

A. The Northwestern National Bank holds it, yes.

Q. They do hold it? A. Yes.

Q. The indebtedness has been greatly reduced?

A. It has been somewhat reduced.

Q. Do you hold the C. A. Smith Timber Company stock that appears in there?

A. The C. A. Smith Timber Company stock?

Q. 300 shares of the C. A. Smith Timber Company stock? **[810]**

Mr. UELAND.—No, it was the Linn & Lane.

A. Mr. McCourt says Smith Timber Company stock. We had Smith Timber Company bonds. We didn't have any stock.

Q. The matter I referred to appears on page 307, where you apparently held 300 shares; it may have been 300 shares of the Linn & Lane Company.

A. Yes.

Q. It seems to refer to the C. A. Smith Timber Company, Marshfield, Oregon, there.

Mr. UELAND.—That is the timber bonds.

Q. That is the way it reads.

A. Come to think now there is a mistake in that record. That stock was the Linn & Lane Timber Company stock.

(Testimony of Edgar L. Mattson.)

Q. You never held any stock then of the C. A. Smith Timber Company of Marshfield, Oregon?

A. No, sir,—well, you say never held it. As far as I know we never did.

Q. When with reference to the time of the amalgamation of the banks did you receive the $400,000 of bonds of the C. A. Smith Timber Company?

A. Well, necessarily before that time.

Q. Yes, but how long before?

A. That I can't say. I don't know.

Q. Hadn't held them very long, had you?

A. Oh, not any great period, no. Sometime during the year 1908.

Q. Now, what had you held as collateral to Smith's obligations prior to that time; say April, 1908?

A. Well, it is possible that we may have had that Linn & Lane Timber Company stock at that time which we are just referring to here. I don't know when we first received that. That was some time in 1908. **[811]**

Q. Well, you made no examination of the company's records to ascertain what property it owned?

A. Examination of the company's property?

Q. Yes. A. At what time?

Q. At the time you took that first stock, or at the time you took those bonds.

A. We were familiar with the bonds. We didn't need a personal examination.

Q. Well, at the time you took the stock; that 300 shares?

(Testimony of Edgar L. Mattson.)

A. No. I presume we had some financial statements. We didn't examine their property.

Q. You had the statement of Mr. Smith?

A. A statement furnished by Mr. Smith.

Q. You didn't know that it had none of its deeds on record?

A. No. In fact I don't know absolutely that we had a statement. As a matter of fact the collateral of Mr. Smith was handled by our Mr. Werner, the President of the bank, who is now dead, and I don't profess to be very familiar with that part of the transactions, except as recording officer on those contracts, and being present at the meetings.

Q. You didn't know anything about what Mr. Werner understood of the matter?

A. No, I don't. I don't know as to that, what information he had at the time he took it, or what examinations he may have caused to have been made, or whether he had any examinations or not. I don't know.

Q. As a matter of fact the bank regarded Mr. Smith as entirely safe, and the collateral was a mere matter of form any way?

A. Well, I can't say that. We asked for the collateral. **[812]** If you will read those records you will find that there is quite a little question about delivering up some of the collateral he wanted returned. A difference of opinion in the Board of Directors as to whether it should be delivered or whether it should not.

Q. Well, that was just at the time the exchange of collateral was proposed? A. Yes, exactly.

(Testimony of Edgar L. Mattson.)

Q. And were you a director at that time?

A. I was.

Q. Were you as a director apprised of the fact that there was a suit involving these identical lands, or part of them, pending at that time in Oregon?

Mr. UELAND.—What time do you refer to?

Mr. McCOURT.—I refer to October 31st, when that agreement was made, or about that time.

A. I had read in the newspapers and heard some general conversation about the question of certain lands. I didn't know what they were.

Q. That was the thing that led to the discussion in the Board of Directors as to whether or not they would surrender the bonds for the stock of a company whose lands, or a portion of them, were being attacked by a suit, was it not?

A. No. The reason was that Mr. Smith had a large amount of obligations, was having difficulty in meeting them, wanted more money, was borrowing where he could, and that was what led the bank to want to be protected. He owed the bank quite a large sum, and it was the duty of the directors to protect the bank.

Q. Yet, you did deliver up $400,000 worth of bonds— **[813]**

A. When we received—

Q. For 225 shares of the stock of a corporation whose title to a portion of its land was being attacked by the Government at the time.

A. We delivered the bonds in exchange for a majority control of the Linn & Lane Timber Company.

(Testimony of Edgar L. Mattson.)

Q. But you already had 300 shares of the stock?

A. Yes, but it didn't give us control. We got enough more to give us the control.

Q. Did you call on the companies for any collateral? A. On the companies?

Q. Yes, for which Mr. Smith was endorser at that time for the larger part of this indebtedness, in fact four-fifths of it.

A. We called on Mr. Smith for the collateral.

Q. Why didn't you call on the companies?

A. We were satisfied with what we received from him.

Q. What?

A. We were satisfied with what we received from him.

Q. But why did you compel the endorser or guarantor and not the original maker or obligee on the instrument, to furnish collateral?

A. When we dealt with Mr. Smith we were dealing with him individually and as an officer of these various corporations.

Q. I understand, but Mr. Smith only owed you $68,540, which he was amply able to pay and he was endorser upon a large quantity of paper, something like $300,000, or nearly $300,000 of the paper of other people who were primarily liable upon that paper and he only secondarily, and yet, you called upon the endorser and didn't call upon the makers at all.

[814]

A. I think we called on him as the officer of the corporations, and him individually. He furnished

(Testimony of Edgar L. Mattson.)

the collateral, but it was taken—you have all the papers, and that was what we had there, it was given by him, and satisfied us.

Q. Yes, but you would have been equally satisfied without any collateral from him if you had got collateral from these original makers, wouldn't you?

A. We wanted collateral on all of it.

Q. Yes, you did, but you didn't call on the other people, of whom there was a half a dozen or more, did you?

A. Well, we considered it all Mr. Smith, these corporations, except one or two, a few small matters, and we had to deal with Mr. Smith in all of these corporations. They were corporations in which he was an officer. We were dealing for the purpose of protecting all the paper, and that is what he gave us. He came forth to protect it.

Q. But you didn't get any paper from any of these institutions which he was endorser for?

A. No, I think not.

Q. Nor neither did you call for any?

A. As I have said, I didn't have anything to do with the actual negotiations, as to whether Mr. Werner asked Mr. Smith personally, or Mr. Smith as president of a corporation, or how he did it. I presume he called on Mr. Smith, as he appeared in the companies, and said, "We want these lines protected," and Mr. Smith protected them, the same as naturally we would know, for instance, if we called on Mr. Trabert, that he would speak to Mr. Smith to come forth and make arrangements. He was the

(Testimony of Edgar L. Mattson.)

man we looked to as the principal. **[815]**

Q. As to the C. A. Smith Timber Company, or the Lumber Co.?

A. Yes, to protect all of the corporations in which he was an endorser.

Q. Well, as to the Lauritzen Malt Company, for instance, he was neither an officer nor a director in that company.

A. Well, you asked me if he was, and I said I thought not. I don't know. I am not sure about that. He may have been an officer and a director. I can't remember. He was a stockholder. I know that.

Q. Now, were those collateral bonds put up there of the C. A. Smith Timber Company to secure Johnson's indebtedness?

A. I can't say that they were. I don't remember. I think they were.

Q. How did you happen to call on Mr. Smith to secure Johnson's indebtedness?

A. Mr. Smith and Mr. Johnson were associated in business and what interested one interested the other. If anything happened to destroy the credit of Mr. Smith it would destroy the credit of Mr. Johnson, and hence we considered it the same.

Q. Well, do you recall that there was anything in that arrangement by which it was sought to put the bank in which you were a director in some way in the position of claiming some interest or equity in the lands in controversy in these suits? A. No.

Q. By holding the stock?

(Testimony of Edgar L. Mattson.)

A. Nothing that I ever heard of.

Q. Didn't you understand that that had something to do with it at the time? A. No. **[816]**

Q. What?

A. No. We knew that there were, as I stated before, some timber lands that the papers had mentioned, etc., that were in question, and—

Q. Who was the attorney for your bank at that time?

A. Mr. Ueland. We found—I can remember personally that a statement was made to us—I don't remember how much the number of acres of land was that the corporation owned. I don't remember in detail. I know there was some discussion on it. We assumed that the corporation owned the land, and that it owned enough to protect us.

(By Mr. UELAND.)

Q. What was the date of Judge Werner's death?

A. February 24th, 1910.

Mr. UELAND.—With the consent of the District Attorney I will make this statement, which the District Attorney has been so courteous as to not require me to make under oath, and to be considered as if made under oath. On one of the first days in April last while Mr. Lind and I were preparing to go out to Portland, Oregon, to attend the taking of testimony in these cases, I called on Mr. C. J. Swanson and asked him if he would let me take a certificate of stock of the Linn & Lane Timber Company, which I understood that he was holding, for the purpose of taking it with me out to Portland, as I might

find use for it in the taking of the testimony out there, and that I would be responsible for it and see that he got it back; and upon that request he handed me a certificate which I now produce. This certificate has since been **[817]** in my possession. I intended to have Mr. Swanson called as a witness on this hearing, but upon telephoning to his house last night, I was informed that he had gone to Winnipeg, Manitoba, and that he was out of my reach to-day. That is the reason that I am forced to make this statement instead of calling him.

Mr. McCOURT.—The statement and the certificate of course are objected to as incompetent and immaterial, and for the other reasons heretofore given in former objections to this class of testimony, and testimony offered for this purpose.

Mr. UELAND.—But as I understand it, the District Attorney waives my being sworn to the statement.

Mr. McCOURT.—Yes.

Mr. UELAND.—By consent of counsel on both sides, the certificate, together with the assignment on its back, are read into the record, and are as follows:

"Incorporated under the Laws of the State of Minnesota.

Number 7. 10 Shares.

LINN & LANE TIMBER COMPANY.

Capital Stock $100,000.

This certifies that Charles A. Smith is the owner of Ten 00/100# —— Shares of ONE HUNDRED DOLLARS each of the Capital Stock of LINN & LANE TIMBER COMPANY transferable only on

the books of the Corporation by the holder hereof in person or by Attorney, upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation [818] at Minneapolis, Minn., this 27th day of February, A. D. 1908.

C. A. SMITH,
President.

VERNON A. SMITH,
Secretary.

SHARES
$100
Each.

(Linn & Lane Timber Company, Minneapolis, Minn., Corporate Seal.)"

(Endorsed on back:)

"Certificate for 10 shares of the Capital Stock of Linn & Lane Timber Company issued to Charles A. Smith. Dated Feb. 27, 1909."

"For value Received I hereby sell, assign and transfer unto Charles J. Swanson 10 shares of the Capital Stock represented by the within certificate, and do hereby irrevocably constitute and appoint ————to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated Feb. 28th, 1908.

C. A. SMITH.

In presence of:

CHARLES L. TRABERT.

NOTICE.—The signature of this assignment must correspond with the name as written upon the face

of the certificate in every particular, without alteration or enlargement or any change whatever."
[819]

Mr. UELAND.—Mr. Lind and I have been in doubt as to the ethics of the matter as respects calling upon Mr. Lind as a witness, in view of the fact that he is counsel in this case. We have concluded that we think he ought to be sworn with reference to a certain matter that came to his attention in connection with the incorporation of the Linn & Lane Timber Cmpany, and in accordance with that conclusion I ask to have Mr. Lind sworn.

[Testimony of John Lind, for Defendants.]

JOHN LIND, after being first duly sworn, testified as follows in answer to questions by Mr. Ueland:

Q. Your full name is John Lind? A. It is.

Q. And your age is what? A. 56.

Q. You live in Minneapolis? A. I do.

Q. Have lived in Minneapolis about how long?

A. Some over ten years.

Q. Your profession is what? A. Lawyer.

Q. Do you know Mr. C. A. Smith? A. I do.

Q. Have known him for a number of years I suppose?

A. Oh, I think upwards of 30 years. More intimately in the last 15 to 20.

Q. Are you the John Lind that appears to have been one of the incorporators of the Linn & Lane Timber Company? A. I am.

Q. Did you have anything to do with the organization of that company? A. I did.

(Testimony of John Lind.)

Q. State briefly what you had to do with it.

A. The organization of the Linn & Lane was one of a series of corporations that were incorporated about the same time for [820] the purpose of acquiring and holding timbered lands in California and Oregon in which Mr. Smith was interested. I prepared the articles in question at the instance of Mr. Smith and in consultation with him, had them published, remitted the fees to the Secretary of State, and later the fees for admission to do business in Oregon were remitted by a clerk in our office.

Q. You say at the instance of Mr. Smith this work was done? A. It was.

Q. Do you recall, Mr. Lind, any reason for naming this corporation the Linn & Lane Timber Company?

A. Well, there were several names to be selected for these corporations, and I am not sure whether I suggested the name, or Mr. Smith, but the lands that were to go into this corporation—there is a corporation at Coos Bay, holding or owning and acquiring timber tributary to the Coos Bay waters, and this was inland, not directly accessible to navigable waters, and Mr. Smith didn't intend that the corporation should start manufacturing immediately; that is why it was put in a separate corporation, and either he or I suggested that Linn & Lane, the names of the two counties in which the bulk of the timber was located, was a good, euphonious name. That is all I remember about it.

Q. The words "Linn & Lane" were chosen in the

(Testimony of John Lind.)

name with reference to Linn and Lane Counties?

A. Certainly.

Q. You were named as one of the directors in the articles of incorporation, were you not?

A. I was. That, however, was only for the purposes of organization. I temporarily held one share of stock during the formal organization of the corporation, [821] but that share of stock was paid for by Mr. Smith, and I had nothing except a nominal interest in it.

Q. The minutes of the incorporators are in evidence in this case, and also the minutes of the first meeting of the board of directors; you are familiar with those minutes; the original records are before you.

A. I am familiar with them. The minutes of the incorporation, which are signed by the incorporators, are in my handwriting. I entered those at the time. The minutes of the first meeting of the board of directors I dictated for Mr. Smith's son, the young man testified to, to follow in entering the minutes and recording them. That was the first time I had seen the young man for a long time; since he was a child. I explained to him how it should be done, and requested him after he had made the record to bring it to the office for my signature and examination. I was personally present at that meeting. The first meeting.

Q. Both of the incorporators and of the board of directors? A. Yes, sir.

Q. Was that meeting held June 9th, 1906, as it

(Testimony of John Lind.)

purports to have been? A. It was.

Q. And where was it held; do you remember?

A. It was held in the private office of Mr. Smith. That is, the office of the C. A. Smith Timber Company, as described by the witness this morning.

Q. The minutes of this first meeting of the board of directors says that "Mr. Smith laid before the board deeds to the company of certain timber lands in the State of Oregon, executed [822] by himself and wife, and a proposition to deliver the same to the company and thereby vest title to the lands therein described in the company, and accept as a full consideration for the same the entire authorized capital stock of the company, fully paid up and nonassessable," etc. Do you recall, Mr. Lind, whether there were any deeds brought before that meeting, as stated in that record?

A. There were. The deeds had been prepared under my direction; that is, I had suggested to Mr. Smith prior to the day of the meeting to prepare the deeds, and of course I formulated that proposition coming to the corporation as an offer from him.

Q. So that at the time of that meeting you knew that deeds had been prepared?

A. Yes, I saw them.

Q. You saw the deeds? A. Yes.

Q. There are some deeds in evidence here marked United States Exhibit 155, covering lands in Linn County, Defendants' Exhibit "D," covering lands in Lane County, and Defendants' Exhibit "C" covering lands in Douglas county; I will ask you whether

(Testimony of John Lind.)
or not you are able to identify those documents as the deeds?

A. I am not able to identify those documents as the deeds, for the simple reason that the deeds I simply examined cursorily, that is, the deeds that were there, and I have done that—well, at that time as often as every two or three months for Mr. Smith, and I can't say whether those are the ones.

Q. That is, you made no mark or anything of that sort for identification?

A. No. If you will pardon me, the only distinct recollection that I have on the subject of deeds—now, I had **[823]** prepared these minutes (referring to book) of the meeting of the board of directors at my office; I dictated that before I left my office, including the proposition, and carried it over to Mr. Smith's office in my pocket, knowing that the young man was to act as secretary, for him to follow as a form; and at that time I hadn't seen the deeds; I knew there was going to be deeds made out, but whether there was to be one or two or several I didn't know; I assumed it would be all put in one deed, and my form that I dictated was in the singular, "deed," and I discovered that there were several deeds. I can't say from any independent recollection that I have now as to whether there were two or three deeds, but I remember there were several when I got to the office. After we had held the meeting, and I gave the young man my memorandum to transcribe into the record and to bring down to me after it was done, I left. I think the next day he brought it down

(Testimony of John Lind.)

for my examination, and upon reading it over I found it read I think "a deed," and I suggested to him that that was not the fact; that there was more than one deed, and I said, "Change that," and he sat down at my desk, and before I noticed it he went to work and scratched the "a," and added an "s." That is the part that I remember distinctly; and I said, "Vernon, I want you to bear in mind never to put a knife on the page of a document of this character. What you should have done, or what I would have you do in a case like this is to draw your pen through there, leaving it intact, and add the 's.' An eraser with a knife is very bad in a document of this character. Strike it out with a pen and leave it intact." Now it is that one thing that makes me remember that there was more than one deed, and nothing else. [824] I can't state now whether it was two or three, but this caution that I gave the boy is very distinct in my mind, and just the minute that I looked at that I recalled it.

Q. Do you recall, Governor, whether at the time of that meeting, or before, in connection with the incorporation of the Linn & Lane Timber Company, you ascertained from Mr. Smith as to his intention of vesting all the lands in these counties in which he was interested, in the corporation, as a consideration for its stock, or only a portion of the lands that he was interested in?

A. My recollection of the conversation on that is that the Linn & Lane Company was regarded as a holding company, that is, a company to hold the

(Testimony of John Lind.)

lands; that it was not his intention that it should commence manufacturing operations immediately, or in the near future, and that it was to acquire the lands that were so located that they were not within his manufacturing sphere. Some 50,000 acres. I don't remember accurately in regard to that.

Cross-examination.

(By Mr. McCOURT.)

Q. You made no examination, Governor, of the description or title to the lands which were to be conveyed. Your function at that time was the organization of the company?

A. The organization of the company.

Q So you had no interest in examining the sort of title it was receiving, or anything in relation to that?

A. No. Mr. Trabert, who testified this forenoon, always attended to the conveyances. I mean the making of conveyances. [825]

[Testimony of Charles A. Smith, for Defendants.]

CHARLES A. SMITH, a witness produced on behalf of the defendants, after being first duly sworn, testified as follows in answer to questions by Mr. Ueland:

Q. Your name is Charles A. Smith?

A. Yes, sir.

Q. Your age is what? A. 57.

Q. Your residence is Minneapolis?

A. Minneapolis.

Q. And you have lived here for about how many years? A. About 40 years.

(Testimony of Charles A. Smith.)

Q. You are one of the defendants in these two cases? A. I am.

Q. Did you hear the testimony given here by Governor Lind? A. I did.

Q. And by Mr. Trabert? A. I did.

Q. (Showing witness papers.) I call your attention to a document marked "United States Exhibit 155," a document marked Defendants' Exhibit "C," and a document marked Defendants' Exhibit "D," and I call your attention to the minutes of the Linn & Lane Timber Company of the meeting of its directors, held on June 9th, 1906, referring to certain deeds which were laid before the meeting and which you offered to deliver to the company in exchange for the stock of the corporation; what deeds do those minutes refer to; what deeds were before that meeting that you offered to give to the company in exchange for the stock of the corporation?

A. These three deeds.

Q. Do you remember going abroad in the spring of 1906? A. I do. **[826]**

Q. When did you go?

A. I left here about the 11th or 12th of June. I sailed from New York on the 16th.

Q. How long did you remain abroad?

A. Until October.

Q. So you were practically away from the 11th of June until some time in October, 1906?

A. Yes, sir, until about the first of October.

Q. In Europe? A. Yes, sir.

Q. (Showing witness paper.) I call your atten-

(Testimony of Charles A. Smith.)

tion, Mr. Smith, to certificate of stock number seven, in the Linn & Lane Timber Company, for ten shares, dated February 27th, 1908, and assigned by you to Charles J. Swanson under date of February 28th, 1908, and I will ask you to state what that was assigned to Mr. Swanson for?

Mr. McCOURT.—I object to that as immaterial and irrelevant.

A. It was assigned as collateral security for a loan.

Q. How large a loan? A. $5,000.

Q. State whether or not Mr. Swanson still holds that certificate; that is, whether he still holds it as a pledge for a loan, or whether he has returned it?

A. He does.

Q. He still holds it? A. Yes, sir.

Q. Is that loan of $5,000 for which it was pledged still unpaid? A. It is still unpaid.

Q. Will you please state, Mr. Smith, without going too much into detail, whether there was anything unusual in the financial situation in the winter of 1908? A. I believe there was.

Q. Was that true of 1907?

A. The latter part of 1907, yes, sir. **[827]**

Q. Will you please state briefly what that situation was, and how it affected you with reference to your credit and outstanding obligations?

Mr. McCOURT.—I make the same objection to that as I have to the other testimony.

A. I was a heavy borrower, owing a great deal of money during the latter part of 1907 and the

(Testimony of Charles A. Smith.)

early part of 1908, and on account of the financial flurry I found myself unable to borrow as much money as I needed, and in many cases to renew obligations which I had.

Q. Did that situation have anything to do with the giving of the stock of the Linn & Lane Company as collateral? A. It did.

Q. Is that true both as to Swanson and as to the Swedish-American National Bank?

A. Yes, sir.

Q. Was that the reason for the pledge of the 300 shares to the Swedish-American, as well as for the subsequent pledge of the majority of the stock?

A. Yes, sir.

Q. It appears from the evidence already in that the Swedish-American National Bank had held $400,000 face value of the bonds of the C. A. Smith Timber Company of Marshfield; that was the fact, was it? A. Yes, sir.

Q. Do you remember when that bond issue was made? A. The first of April, 1908.

Q. Secured on what lands, broadly speaking?

A. Lands located in Southwestern Oregon, and some in California.

Q. Lands in which you were so interested as to control them? [828]

A. Yes, sir.

Q. Either directly or through corporations that you controlled? A. Yes, sir.

Q. Did you ever have any intention of pledging

(Testimony of Charles A. Smith.)

the lands in controversy here to secure those bonds?

A. No, sir.

Mr. McCOURT.—This is all subject to my objection.

Q. As to the lands here in controversy, is or is it not a fact that while the legal title stood in Judge Werner they were mortgaged for $40,000?

A. That is a fact.

Q. And the mortgage held by the First Trust & Savings Bank of Chicago? A. That is a fact.

Q. And is it not a fact that before these Government suits were commenced you paid that mortgage and cleared those lands? A. Yes, sir.

Q. When did you begin, Mr. Smith, to become interested or engaged in the acquisition of timber lands on the Pacific Coast? A. In 1900.

Q. About what time?

A. In the spring of 1900.

Q. During the early part of 1900 were timber lands out there on the coast acquired by scrip of different kinds? A. Yes, sir.

Q. Did you acquire to a considerable extent timber lands by scrip during the early part of 1900?

Mr. McCOURT.—That is objected to as immaterial.

A. Along during the later spring and summer we did.

Q. What was the value of scrip such as could be used in getting Government lands at that time?

A. In January, 1900, I was offered scrip in large blocks, that is, 10,000 acres or more, [829] at

(Testimony of Charles A. Smith.)

$2.35 an acre.

Q. As a matter of fact, what did the scrip cost you that you actually acquired?

A. My recollection is that the first scrip we bought cost us $3.25. I remember of buying one lot of scrip during the summer of 1900 that I paid $3.35 for.

Q. Do you remember going out to San Francisco sometime in March, 1900? A. I do.

Q. Do you remember on that trip meeting S. A. D. Puter? A. Yes, sir.

Q. Whereabouts? A. At the Palace Hotel.

Q. San Francisco? A. Yes, sir.

Q. About what time in the month?

A. About the middle of the month.

Q. Was there then some talk between yourself and Mr. Puter concerning the lands in Linn County, Oregon? A. Yes, sir.

Q. Will you please state what it was?

A. Mr. Puter claimed to have some eight or nine thousand acres of land which he offered for sale. He made representations as to the amount of timber, and its availability for logging.

Q. Now, you may tell us what those were?

A. He claimed that the lands would average 75,000 feet to the acre; that the lands were comparatively level, a splendid logging chance; the timber was a fine quality of yellow fir; that the timber was tributary to drivable streams which would make it practical to drive logs to Portland.

Q. State what further talk you had, if any.

A. Then the question came up as to the price, and

(Testimony of Charles A. Smith.)

he offered to sell these **[830]** lands at $6.00 per acre. This was the first timber that I had figured on on the coast, that is, not the first timber that had been offered to me, but the first fir timber outside of a tract which he had offered to sell me before which nothing came out of—this was the first tract that was offered to me.

Q. By the other do you refer to some school lands that he had pledged to one Baldwin, of Appleton?

A. Yes, sir.

Q. So except those school lands pledged to Baldwin at Appleton, upon which he gave you an option dated February 8th, 1900, this is the first fir timber that was brought to your attention?

A. Yes, sir; so that I was not familiar with the stand of fir timber; I never had had any investigation made as to it, and 75,000 feet per acre seemed astounding to me.

At this point the further taking of testimony in these causes was adjourned until Friday, June 10th, 1910, at 10 o'clock A. M. **[831]**

Friday, June 10th, 1910, Ten o'clock A. M.

Met pursuant to adjournment.

Present as before.

C. A. SMITH recalled.

Direct Examination (Resumed).

(By Mr. UELAND.)

Q. Mr. Smith, go on and give as fully as you can the conversation between you and Mr. Puter at this time in San Francisco concerning these lands in Linn County.

(Testimony of Charles A. Smith.)

A. Well, as I think I stated before, he made a price of $6.00 per acre, and I told him in substance that if the timber was as he claimed, and the topography of the country, and the streams, I would take the land. Mr. Kribs was present at the conversation, and then we had an understanding there at that time that some time in the near future when Mr. Kribs would get up into Oregon, he would go and look these lands over, and if he found the lands as Mr. Puter claimed, then I would take them. In other words, Mr. Kribs should be the judge whether the lands and everything was in accordance with the representations of Mr. Puter.

Q. At this time was there anything said concerning the title to these lands?

A. There was nothing said except this; Mr. Puter claimed that he had these lands for sale.

Q. Anything said about entries having been made under the Timber and Stone Act recently of those lands? A. No, sir.

Q. Or that they had to be proved up under any law of Congress before they could be sold; anything of that sort? A. No, sir.

Q. Have you stated as fully as you can the entire conversation **[832]** between yourself and Mr. Puter at that time?

A. As far as I can remember. There may be some other things that a question might jog my memory, perhaps, but whatever was said, the impression that I had was that Mr. Puter either owned or absolutely controlled these lands, and was in position

(Testimony of Charles A. Smith.)

to deliver an absolutely good title.

Q. That is the impression made upon you at that time? A. Yes, sir.

Q. Had the subject of those lands been brought up between yourself and Mr. Puter before that time?

A. No, sir.

Q. This you say was about the middle of March, 1900? A. Yes, sir.

Q. How long did you stay out on the coast at that time; about?

A. Only a few days. I went out there on some other business.

Q. You went out on some other business?

A. Yes, sir; had my wife and daughter with me.

Q. And then you returned east?

A. Yes, sir. I don't think I was there over three or four days.

Q. It appears in evidence in this case, Mr. Smith, that you were registered at the Revere House, at Albany, Oregon, on May 21st, 1900; do you remember being there at Albany about that time?

A. I was at Albany about that time.

Q. And if the hotel register shows your registration at the hotel on that day, it would have been on that day? A. Yes, sir.

Q. State where you came from when you arrived there at Albany at that time.

A. I came from Portland.

Q. From Portland? A. Yes, sir. [833]

Q. And had you stayed there at Portland any time, or where did you come from before?

(Testimony of Charles A. Smith.)

A. Why, I think I might have been in Portland perhaps three or four days. I am not sure about that. I could tell exactly when I left home.

Q. About when did you leave home?

A. I say if it is important I could look up and tell exactly when I left home.

Q. I don't think that is specially important, but state as nearly as you can whether you had come from the east shortly before?

A. Yes, that is my recollection.

Q. Where did you meet Mr. Puter on that trip first? A. At the hotel at Albany.

Q. At the hotel at Albany? A. Yes, sir.

Q. You had not met him at Portland?

A. No, sir.

Q. Nor before you arrived there at Albany?

A. No, sir.

Q. Had you met Mr. Puter between the time you saw him at San Francisco in March and this time when you met him at Albany? A. No, sir.

Q. Between those times had there been any communications between you and Mr. Puter concerning the acquisition of these Linn County lands?

A. No, sir.

Q. What transpired concerning the lands in controversy after you arrived at Albany on May 21st and met Mr. Puter?

A. Well, the day following we went up into the woods, and as I was told onto some of these lands.

Q. What did you learn concerning the lands, and as to what had been done as respects obtaining the

(Testimony of Charles A. Smith.)

lands at that time?

A. Well, I learned that a certain amount of the lands had **[834]** been secured, and I learned also that these lands, instead of being patented lands as I supposed, that the lands had been proved up on. I learned then for the first time that mortgages had been taken on the lands—

Q. By Kribs?

A. Yes, sir; and that there had been some controversy with the Northern Pacific Railroad between some of the entrymen, or Mr. Puter, or whoever was in interest; I don't remember, in regard to some lands, which reduced the acreage, the original acreage that was talked by Mr. Puter.

Q. What was the original acreage talked by him?

A. My recollection is somewhere about 9,000 acres. Eight to ten thousand acres, something like that.

Q. Previous to this time when you met Puter on May 21st, and visited the lands, had you known anything about Kribs having taken the mortgages for money advanced towards proving up?

A. No, sir.

Q. And previous to that time, had you learned or heard anything about any contest between the Northern Pacific Railroad Company and the entrymen? A. No, sir.

Q. And previous to that time, had you known anything about the title of those lands, that is, as to whether they were patented lands or not patented lands?

(Testimony of Charles A. Smith.)

A. I don't think I had. I am not absolutely positive about that.

Q. You are not absolutely positive about that?

A. I am not, but I don't think I had.

Q. After that trip that you have referred to in which some of the lands were visited, what did you and Mr. Puter do; where [835] did you go?

A. Why, I went back to Portland, and after a few days, as I remember—I think really what you refer to, shortly after, a few days after we returned, we went to Humboldt County overland, over Grant's Pass, Mr. Puter and his family, Mr. Kribs and his family and myself.

Q. And was it after you came to Humboldt County that the first contract between you and Mr. Puter for the purchase of the Redwood lands was entered into?

A. Yes, sir. Now, if I had the contract I could tell.

Q. I have it here and I will show it to you.

A. I had one contract with Mr. Puter made in Portland, and another one in San Francisco, and I am not sure whether the first one was in San Francisco or in Portland. I think, however, it was in San Francisco, after we had been at Eureka. I think that contract was made either in Eureka or in San Francisco.

Q. You refer now to the first contract?

A. The first contract.

Q. The first Redwood contract for Humboldt County lands, dated May 31st, 1900?

A. Yes, sir. I can't remember that any contract

was made in Eureka, but the time was so short there that it seems possible. I know we had one contract made in San Francisco, and one in Portland, and I don't remember of but two contracts. It is possible that this contract was made in Portland before we went down. I am not positive about that.

Q. Well, that is not material. At any rate, the business transaction between you and Mr. Puter concerning your acquisition of Redwood lands in Humboldt County was subsequent to this meeting between you on May 21st, 1900? A. Yes, sir. [836]

Q. And previous to May 21st, 1900, you had had no dealings with Mr. Puter except getting the option of February 8th, 1900, for some school lands that he had pledged to Mr. Baldwin of Appleton?

A. No other dealing; no, sir.

Q. No other business?

A. In fact I had never seen Mr. Puter at any time, or known that there was such a man living, until the 7th or 8th of February, 1900, and the second time in San Francisco the middle of March, the 14th or 15th of March, and the third time when we met at Albany.

Q. It is in evidence in this case, Mr. Smith, that the lands in controversy in suit No. 3320, were conveyed to John A. Willd; will you state if you know at whose direction that was done?

A. My direction.

Q. Given to whom? A. Mr. Kribs.

Q. At the time when those lands were so conveyed to Mr. Willd, at your direction, did you believe that

(Testimony of Charles A. Smith.)

the parties deeding the lands, the several grantors, could lawfully convey those lands?

Mr. McCOURT.—I object to that as incompetent. The belief of the witness asserted at this time, not being competent evidence. The facts and circumstances under which the transaction was made, and the acts done being the best evidence of the character of the transaction.

A. I certainly did.

Q. Did you at the time of the conveyances of those lands to Mr. Willd believe that the several grantors had a right to convey the lands to him?

A. I certainly did. I believed **[837]** that the grantors or grantor had an absolute perfect title.

Q. Did you at that time or at any time previous to the issuance of the patents of those lands know that any of the grantors of any of the lands involved in this suit No. 3320 had in any way violated any Act of Congress in entering those lands? A. I did not.

Q. It appears in the evidence in this case that those lands were paid for at the rate of $5.25 per acre, or thereabouts; is that a fact? A. That is a fact.

Q. Was or was not that price at that time the fair and reasonable value of those lands?

A. We considered it so.

Q. How?

A. I say I considered it so from what little information I had had.

Q. Well, according to your best judgment was it or was it not? A. Yes, sir.

Q. Did you or did you not act in perfect good faith

(Testimony of Charles A. Smith.)
in purchasing those lands and having them conveyed to Mr. Willd?

Mr. McCOURT.—The question is objected to as incompetent, the question of good faith being one for the Court.

A. I did.

Q. Mr. Smith, you are aware that suit No. 3319 involves the title to, I think, 17 quarter sections of land in Linn County, in Township 14, Range 2 and 3, I believe, conveyed by several parties in the fall of 1900 to Mr. Kribs; you are aware of that?

A. Yes, sir.

Q. In the bill of complaint it is charged that the parties conveying those lands had entered them during the dummer of 1900, [838] under some alleged contracts with George R. Mealey, O. Judd Mealey and John A. Thompson; from what I now call your attention to you know the lands I refer to, do you not?

A. Well, I don't know by the descriptions.

Q. But you know otherwise?

A. I know there is a suit regarding a lot of lands, 17 quarter sections, yes, sir, but I don't remember the descriptions.

Q. Now, Mr. Smith, I will ask you to state what, if anything, you had to do with the purchase of those lands? I mean personally.

A. Absolutely nothing, as far as the Mealeys or the entrymen were concerned.

Q. Absolutely nothing?

A. Absolutely nothing.

Q. When did you first know of the negotiations

(Testimony of Charles A. Smith.)

for the purchase of those lands?

A. When Mr. Kribs came to us with the lands.

Q. Was that after the lands had been conveyed to him? A. That is my recollection, yes, sir.

Q. Well, sometime after those lands had been conveyed to Kribs that fact was brought to your attention by him, and you gave credit, did you, for the money that he had used in buying those lands?

A. Yes, sir.

Q. Do you remember now, the cost, about?

A. I do not.

Q. It appears in testimony that some of those were bought, I think, at $4.75 per acre, and some at a little over $5.00; I forget now, exactly; can you remember in a general way whether that was about the price paid?

A. Somewheres about that.

Q. At the time when you learned of those lands having been [839] purchased by Kribs as you have stated, did you believe that the grantors had the right to convey those lands? A. I did.

Q. And that their conveyance gave good title?

A. I did.

Q. Did you at that time have any notice or knowledge of any infirmity in the title of those lands on the part of the grantors? A. I did not.

Q. Or did you at that time have notice or knowledge of any violation on the part of any of the grantors of any Act of Congress in entering those lands? A. I did not.

Q. Was the amount paid for those lands a full

(Testimony of Charles A. Smith.)

and fair value for them? A. I think so.

Q. At that time? A. I think so.

Q. It appears in evidence that Mr. Kribs, after having acquired the title, conveyed an undivided one-fourth of these lands to Charles J. Swanson, and an undivided three-fourths to yourself; was that at your direction? A. Yes, sir.

Q. Mr. Smith, did you sometime after the purchase of these lands—and I refer now to the lands affected by both these suits,—ascertain that the issuance of the patents had been suspended?

A. I did, yes, sir.

Q. That came to your knowledge, did it?

A. Yes, sir.

Q. Can you remember about when?

A. Well, it was sometime after. Some months.

Q. Some months after the purchase?

A. Yes, sir.

Q. Were you aware from the time that came to your attention and until the patents were issued that there were some investigations and inquiries on the part of the Government concerning the [840] validity of the entries? A. Yes, sir.

Q. State, Mr. Smith, what, if anything, you did in connection with those investigations?

A. I done nothing.

Q. During that investigation, that is, from the time the issuance of patents was suspended until the patents were issued, did you yourself, or did any one to your knowledge for you, extend any favors of any sort to any agent or officer of the Government with a

(Testimony of Charles A. Smith.)

view of facilitating or procuring the issuance of patents? A. No, sir.

Q. Mr. Smith, Mr. Puter testified in these cases that on some occasion when you and he met you suggested sending a couple of carloads of Swedes to enter lands, to which he remonstrated that it would cost too much, and so on; I will ask you whether you ever had any conversation with Mr. Puter in which you made any such suggestion?

A. No such a conversation, no, sir.

Q. At any time? A. Never.

Cross-examination.

(By Mr. McCOURT.)

Q. How long have you been engaged in the lumber business, Mr. Smith? A. 25 years.

Q. Here in Minnesota? A. Yes, sir.

Q. Have you been a manufacturer during this time? A. Yes, sir.

Q. Were you engaged at all in that business prior to the time you became a manufacturer of lumber products?

A. In the retail lumber business. **[841]**

Q. In your lumber business have you been the owner of timber lands here in Minnesota, as well as west? A. Yes, sir.

Q. Have you owned lands in any other State except Minnesota here in the middle west?

A. Only here and in the west; the middle west.

Q. You have not owned any timber lands in the States immediately adjacent to Minnesota?

A. Adjacent to Minnesota?

(Testimony of Charles A. Smith.)

Q. Yes. A. No, sir.

Q. To what extent have you been the owner of timber lands in Minnesota, and are you the owner of timber lands in Minnesota?

A. We owned considerable timber land here at one time.

Q. Were those lands which were purchased prior to patent, some of them? A. Yes, sir.

Q. You have been engaged in purchasing lands ever since the adoption of what is known as the Timber and Stone Act?

A. I am unable to say that. I don't remember when the Act was adopted.

Q. I think it was adopted as to Minnesota in 1891, and 1878 as to the Western States.

A. I think it was somewhat later than that when we bought land.

Q. Then, during the time that you have been buying lands, it has been since the adoption or application of the Timber and Stone Act as to Minnesota?

A. We have bought some, yes, sir.

Q. Prior to the time that you came into the market in Oregon you were familiar with the terms of the Timber and Stone Act? A. Yes, sir.

Q. How long had you been associated with Mr. Kribs prior to **[842]** 1900?

A. A few years.

Q. About how many years?

A. Possibly five or six years.

Q. In what capacity, or what had your relations been in a business way?

A. He had done some cruising for us, and bought

(Testimony of Charles A. Smith.)

some timber land.

Q. Here in Minnesota? A. Yes, sir.

Q. Before he went west at all he had made some arrangement with you as to the purchase of lands for you, had he not?

A. There was no arrangement as to purchasing, no, sir.

Q. Well, there was some understanding between you that if he saw something that you wanted he would submit it; let you know about it?

A. Yes, sir.

Q. And had he met Puter at the time you and he talked out in California, or did you introduce Puter to him? A. He had met Puter before.

Q. He, as I understand it, had met him in connection with the school lands? A. Yes, sir.

Q. Which you were contemplating purchasing from Puter there sometime prior?

A. Yes, sir, in February.

Q. It was in February, 1900, that you first had your conversation with Puter in relation to these school lands in Coos County?

A. Why, February 7th or 8th, yes, sir.

Q. Here in Minneapolis? A. Yes, sir.

Q. Did he talk to you generally about timber land conditions in Oregon at that time?

A. No, I don't think he did, no, sir.

Q. Didn't he at that time tell you there was a vast area of timber out there? A. No, sir.

[843]

Q. That the title to hadn't gone out of the Government? A. No, sir.

(Testimony of Charles A. Smith.)

Q. You knew that any how, didn't you?

A. No, sir.

Q. Did not? A. No, sir.

Q. Do you mean to say that you didn't know that there was a lot of timber land in Oregon there until Puter talked with you about it in March later?

A. As to part of the question, I knew there was a good deal of timber in Oregon, yes, sir.

Q. And that the title to the same hadn't passed out of the Government?

A. I didn't have any knowledge on that.

Q. You didn't know anything about the condition of the titles, or how much of it had been located upon or taken? A. No, sir.

Q. Now, in this conversation that you had in March with Puter, didn't he tell you that he would require a considerable sum of money to perfect title in you to these lands? A. No, sir.

Q. Said nothing to you about furnishing money?

A. No, sir.

Q. You did know before you sent any money out there that Kribs hadn't secured any title to the lands? A. No, sir, I think not.

Q. You don't think so? A. No, sir.

Q. You knew you were not sending enough to pay for that amount of land in the first remittance you made?

A. I knew, of course, that—I didn't know as to the quantity of land.

Q. Well, you thought there would be about between eight and nine thousand acres?

A. Yes, sir. [844]

(Testimony of Charles A. Smith.)

Q. At $6.00 an acre? A. Yes, sir.

Q. Didn't Kribs report to you between April 1st and April 20th, or April 13th, when you sent him a draft for $30,000, that he had examined the land?

A. Yes, sir.

Q. And that he had found that there was merely initiative entries on it and no proofs had been made?

A. He didn't give me any such information.

Q. Didn't you understand when you sent that $30,000 that it was to be used as proof money upon those lands? A. No, sir.

Q. Didn't he report to you that Puter's associate, McKinley, had been arrested in connection with the land? A. No, sir.

Q. That the Northern Pacific Railway Company was contesting the right to enter the lands?

A. No, sir.

Q. You had no information of that kind?

A. No, sir.

Q. You think Mr. Kribs neglected to report that to you? A. I had no such report.

Q. Kribs was pretty prompt in reporting matters, wasn't he?

A. I suppose he didn't consider that that was my business. I don't know. I didn't have any such information.

Q. You have always found Mr. Kribs pretty active in looking out for your interests, haven't you?

A. Yes, sir.

Q. During your entire experience with him?

A. Yes, sir.

Q. You say that the first that you learned that

(Testimony of Charles A. Smith.)

the money you had sent out there had been required to make proofs, was on May 20th when you were out there? A. Yes, sir.

Q. Kribs hadn't reported to you between April 1st and May 20th the operations that he had conducted there in your behalf? **[845]**

A. No, sir.

Q. What did he report to you when you got out there?

A. Well, I learned at that time—that is the first information I had in regard to those controversies. It was at that time.

Q. You learned then that the Northern Pacific Railroad Company had contested all of the entries, 33 of which you had secured, upon the ground that the entries were fraudulent?

A. I think that was the report I received.

Q. And that McKinley had been arrested?

A. I don't remember anything of that.

Q. And that Puter had found it necessary to relinquish 24 of the entries? A. Yes, sir.

Q. Only leaving 33 for you?

A. He didn't say it was left for me, but 33 claims was all that was deeded to us.

Q. Did Kribs explain to you at that time that he had taken mortgages?

A. I don't remember as to that. I think possibly he may have done so.

Q. Did he say to you that the mortgages were taken on the same date the deeds were given?

A. No.

Q. Did you see the deeds? A. No, sir.

(Testimony of Charles A. Smith.)

Q. When did you first see those deeds?

A. I don't remember as I have ever seen them.

Q. When were they first sent to your office?

A. Well, that I am unable to tell.

Q. They were sent in promptly by Mr. Kribs after they were recorded?

A. Some of the lands that we buy from Mr. Kribs we **[846]** get the deeds very promptly, and some we get them very slowly.

Q. Now, you sent Mr. Kribs $30,000 on the 12th day of April, and $5,000 upon the 30th day of April, 1900, or rather that was a sight draft on you; now didn't Mr. Kribs write you as to the necessity of the sight draft, or why he had drawn it, and explain to you anything about that?

A. I have no recollection as to that.

Q. You didn't send him any more money then until May 10th? A. Possibly.

Q. And then it was a sight draft for $40,000?

A. I have no information—no data before me to either verify or deny that.

Q. Now, didn't Mr. Kribs write to you between the times that you had sent him these sums of money as to what use had been made of them, or what progress he was making in acquiring the title to these lands? A. I don't think so.

Q. Where is the correspondence between you and Mr. Kribs from that date, say from April 1st, 1900, until November or October of the same year, or even for the entire year preceding that; have you got it?

A. No, sir.

Q. What became of it?

(Testimony of Charles A. Smith.)

A. I have not seen it for years.

Q. Well, do you know whether it is in existence or not?

A. I don't know. I will give you my surmise, but I don't know.

Q. What is your surmise?

A. My surmise is that the correspondence was sent to Mr. Kribs, and it is either in his possession or destroyed.

Q. You then have none of your correspondence between Kribs **[847]** and yourself?

A. No, sir.

Q. Or the C. A. Smith Lumber Company?

A. During that period.

Q. Nothing that pertains to these lands?

A. No, sir.

Q. Did Mr. Kribs request that you send it to him, or how did you happen to send it to him?

A. Well, the request did not come to me, and it was not sent at my suggestion or by my instructions. I think that is all I can tell you.

Q. It was sent, however, at the request of Mr. Kribs? A. That is my understanding.

Q. Who did sent it as you understand it?

A. I can't tell you that.

Q. Somebody in your office?

A. I asked for the correspondence the other day and I was told that the correspondence was not here, hadn't been for years.

Q. Well, you did understand that sometime the latter part of 1904 or early in 1905 that correspondence was made away with by Mr. Kribs?

(Testimony of Charles A. Smith.)

A. I was told so the other day.

Q. You knew it before that, didn't you?

A. Not to my recollection.

Q. What? A. No, sir.

Q. Who in your office would have authority to send that to Mr. Kribs without your knowledge and consent?

A. Well, Mr. Trabert was the secretary.

Q. Mr. Trabert would not take it upon himself to send off a bundle of correspondence relating to a transaction of this kind without asking you about it?

A. I think so. Especially if I was not here he would. **[848]**

Q. Do you know whether you were here or not?

A. I am away considerable of the time.

Q. Yes, but you were around here about the time that you and Puter made a certain settlement for $10,000, weren't you? A. About what time?

Q. At the time that you and Puter made a settlement for $10,000 that Puter claimed was due him.

A. Can you fix the date?

Q. January, 1905.

A. I was here in the beginning of January, 1905.

Q. But you recall a transaction in regard to $10,000 standing between you and Puter relative to the Humboldt lands, don't you?

A. Yes, sir, I recall the fact that he claimed—

Q. And that you did settle with him?

A. It was paid, yes, sir.

Q. You attended to that transaction yourself; authorized the payment of it?

A. I think so, yes, sir.

(Testimony of Charles A. Smith.)

Q. And don't you recall that it was about that time that Mr. Kribs was very anxious about this correspondence?

A. I don't recall that, no, sir.

Q. And that you were anxious about it yourself?

A. I don't recall that, no, sir.

Q. Don't recall that you had any anxiety about that? A. No.

Q. May you not have authorized the transmission to Mr. Kribs of that correspondence about that time?

A. How was that?

Q. May you not have authorized the transmission to Mr. Kribs of that correspondence about that time?

A. No, sir, I have no recollection of it. [849]

Q. You would not say that you did not?

A. I have no recollection of the request ever coming to me, or that it was sent by my instructions or with my knowledge.

Q. You would not say that it was not sent with your knowledge or by your instructions?

A. Yes, I would say positively.

Q. What?

A. I know so, because the first information that I had that it was sent was only a few days ago.

Q. Didn't Mr. Ueland and Mr. Lind before they came out to Oregon ask you about that very correspondence?

A. I don't think they did, no, sir.

Q. You furnished them the correspondence between you and Mr. Puter?

A. Mr. Trabert may have done so.

(Testimony of Charles A. Smith.)

Q. What?

A. Mr. Trabert may have done so.

Q. You recall that in that Humboldt settlement you secured from Mr. Puter the correspondence between you and him?

A. I recollect no correspondence between me and Mr. Puter at the time the settlement was made, no, sir.

Q. Well, you do know now that you did get the letters from Mr. Puter which you had theretofore sent to him in regard to this transaction?

A. Yes, sir.

Q. What?

A. Yes, sir. I thought you referred to the correspondence at the time of the settlement.

Q. No.

A. You mean the previous correspondence?

Q. Yes, the previous correspondence. You said something about a loan of $40,000 that you got from the First Trust & Savings Bank of Chicago, that you paid; that loan was secured upon your credit upon a note endorsed; the note mentioned in [850] that mortgage.

A. It was secured upon a mortgage.

Q. You endorsed the note? A. Yes, sir.

Q. And later paid it? A. Yes, sir.

Q. Do you recall when you paid that mortgage, Mr. Smith? A. No, I do not.

Q. Did you pay it before or after the Linn & Lane Timber Company was organized?

A. I am quite sure it was paid after.

Q. Who is Charles M. Amsden?

(Testimony of Charles A. Smith.)

A. A gentleman in this city.

Q. What is his business?

A. Grain business.

Q. You didn't secure the loan from him, did you?

A. No, sir.

Q. What did you do with those $400,000 of bonds of the C. A. Smith Timber Company after you secured them from the Swedish-American National Bank? A. Sold them.

Q. When? A. Shortly after.

Q. Was that the purpose of exchanging the securities, so that you might sell those bonds?

A. Yes, sir.

Q. What was the purpose of that issue of bonds in the first place?

A. In order to raise some money.

Q. For yourself or your companies in which you were interested? A. Yes, sir.

Q. To use out there in Oregon or here?

A. For the different interests which I have.

Q. And did you raise that money which you were liable on there at the time you made the exchange upon the credit of those bonds?

A. Well, I don't know as I understand you exactly. I don't know as I understand the import of your question.

Q. Well, you had a certain amount of indebtedness there, or [851] rather you had the bonds up as a general collateral for all your indebtedness to the bank? A. Yes, sir.

Q. Was that an indebtedness that existed prior to the time the bonds were issued?

(Testimony of Charles A. Smith.)

A. Yes, sir.

Q. Or which accrued afterwards?

A. Existed before the bonds were issued.

Q. Then up to the time you secured this exchange you never had used the bonds for the purpose for which they were issued?

A. As far as they reached, yes, sir.

Q. You hadn't used this $400,000 of bonds?

A. I hadn't at the time, because they were with the Swedish-American National Bank.

Q. How?

A. I say I hadn't up to that time because they were with the bank.

Q. What security had you with the Swedish-American Bank before you gave them this $400,000 in bonds?

A. The only security they had as far as I remember was $30,000 of stock of the Linn & Lane Timber Company. Perhaps I might explain a little there in connection with that. I was a director of the bank—

Q. The Swedish-American?

A. Yes, sir, and after the panic in the fall of 1907, sometime in the fall or winter, or possibly may have been in the spring, the records will show that, it was decided by the directors that all directors or officers that owed the bank money should put up collateral security for the bank, and I put up in February—I don't remember whether the resolution was passed before the middle of February or not, but the middle of February I put up $30,000

(Testimony of Charles A. Smith.)

of the stock of the Linn & [852] Lane Timber Company.

Q. What time?

A. The middle of February, 1908, and then later, after the bonds were issued—the bonds were dated the first of April, but were not issued until May. After the bonds were issued I put up $400,000 of the bonds in addition to the stock.

Q. What was the capital of the Swedish-American National Bank at that time?

A. $500,000.

Q. And afterwards were you a director also of the Northwestern National Bank?

A. No, sir.

Q. What is its capital, do you know?

A. I think it is $2,000,000.

Q. Then, the purpose of these different liabilities, or rather the reason for you appearing as endorser merely upon these instruments, was to keep within the requirements of the banking laws, that you could not borrow more than five per cent of the capital?

A. Most of the different interests I had of course were doing business there, and I was guarantor for their line of credit in most of the cases. There were one or two endorsements where that was not the fact. That is, personal endorsements.

Q. Of course, where you were liable upon the C. A. Smith Timber Company and C. A. Smith Lumber Company liabilities, it was practically your own obligation, and so regarded by the bank?

A. Under the guaranty contract, yes, sir.

(Testimony of Charles A. Smith.)

Q. And what was the fact as to Oscarson & Company and Johnson & Company?

A. I was an officer and director.

Q. Were those liabilities for moneys that were used by these [853] companies, or was it money that was used by you and which it was understood that you were responsible for?

A. Money that was used by those companies.

Q. You didn't use that in any enterprise of your own? A. Not personally, no, sir.

Q. But you controlled—

A. I controlled the companies.

Q. You controlled these several companies?

A. Yes, sir.

Q. As well as the C. A. Smith Lumber Company?

A. Yes, sir, I was liable under the guaranty bond.

Q. And that Lauritzen Malt Company, you controlled that also?

A. I was president of the company and a large stockholder.

Q. And the Swedish Printing Company?

A. Yes, sir.

Q. You controlled that, also?

A. Well, I didn't control it, but I was an officer; a director and officer and large stockholder.

Q. And those moneys were used in those different concerns? A. Yes, sir.

Q. You didn't mortgage any of your lands to these banks to secure this indebtedness?

A. No, sir.

Q. Neither here nor in Oregon? A. No, sir.

Q. You merely put up the stock or bonds of the

(Testimony of Charles A. Smith.)
several companies which you were interested in?

A. Yes, sir.

Q. What sort of scrip was that that you were offered in January, 1900, for $2.35?

A. I am not positive, but my recollection is it was Northern Pacific scrip, but I am not positive as to that.

Q. Who offered it to you?

A. I can't remember that. I tried **[854]** to look it up the other day, but it is so long ago—

Q. How is it you can remember that it was $2.35 when you can't remember who offered it to you or what kind of scrip it was?

A. I can remember distinctly because at that time, of course, I had no use for the scrip, and didn't know whether I ever should use any of it or not, or I would have bought it, because it was so cheap. We had bought a little before, as I remember it, that is, during the years previous, but very little, but at this time I had no knowledge whether I could use any scrip or not, and so I didn't take it. But afterwards, that is, during the year, in the summer or fall of the year when we found that we could use scrip, why, then I kicked myself because I didn't accept that offer. That is the reason I kicked myself because I paid 90¢ on the dollar more.

Q. The $3.25 scrip that you used in the late spring there, was that bought by Kribs or by you?

A. The $3.25 scrip was bought by Mr. Kribs for my account at $3.25. Later on in the summer, I think in August or September, I bought a batch for myself at $3.35.

(Testimony of Charles A. Smith.)

Q. Who did you buy that from?

A. I bought that from the representative of A. B. Hammond. I say it was his representative; it was his bookkeeper or clerk. Whether it was his scrip or not—

Q. Here or where?

A. In Roseburg, Oregon.

Q. Was that when you was out there in August?

A. Yes, sir.

Q. Who was the representative of Hammond there?

A. Now, I don't remember the name. If the name was suggested **[855]** to me I would remember it.

Q. A banker?

A. No, it was his clerk; bookkeeper or confidential clerk.

Q. Did he live there in Roseburg?

A. No, sir, I think he lived in Portland.

Q. McLeod?

A. I think it is McLeod, yes, sir. I am quite sure it is McLeod. Do you know McLeod? As I remember the man he was sandy complected. It was not Mr. Joslyn. I am quite sure it was McLeod.

Q. What sort of scrip was that that Kribs bought at $3.25 for you? A. I don't remember that.

Q. Did you buy any school indemnity scrip to use?

A. No, sir, I don't think so. I have no recollection of using any in Oregon.

Q. You later used a lot of school land indemnity scrip there, didn't you, later than 1900?

(Testimony of Charles A. Smith.)

A. Well, not to my knowledge.

Q. How long did you remain out there in Linn County at the time that you and Puter went out to look over these lands?

A. We were there two nights. We left Albany on the train to Lebanon, and drove from Lebanon to Mr. Mealey's and stayed there over night; then went out onto some lands, whether the lands in these suits or not I am not sure, but I was told they were lands which were deeded to Mr. Willd, and came back to Mealey's that evening and stayed there that night, and then drove down to Albany the third day. Then I went right up to Portland.

Q. Who went out into the timber with you?

A. Mr. Kribs, Mr. Puter and Mr. Mealey as I remember it, and **[856]** I think one or two other men, I don't remember.

Q. Mr. Thompson among them?

A. Possibly. I don't remember the names of the men. Never met the men before or since.

Q. How long did you stay in the timber?

A. Well, we stayed one day. We went out from Mr. Mealey's on horseback up into the timber and the same evening came back to Mealey's.

Q. Did you ascertain that there were other lands there that were subject to entry, or that hadn't been taken; Government lands in that vicinity?

A. I think it was on that trip that I was told that there was a good deal of vacant Government land.

Q. Some of it lying near this other land that you had acquired? A. In that district, yes, sir.

(Testimony of Charles A. Smith.)

Q. And much of which you later acquired?

A. Yes, sir.

Q. Did you ascertain at that time that Mr. Kribs had paid only $5.25 for that land instead of $6.00?

A. Yes, sir, Mr. Kribs advised me that he had bought the land for $5.25. Of course, that was before that time. Before that time in April he advised me he had bought the land.

Q. By letter or how?

A. By letter or wire, I am not sure: that he had bought the lands for $5.25, and asked me if we wanted them; advised me that the lands were not as represented by Mr. Puter.

Q. Well, wasn't it a fact that he represented that you could not get as much on account of the Northern Pacific Company butting in there?

A. No—well, he may have said something that he had bought so many acres, possibly, I don't remember as to that, but he advised me that the lands were not as represented; that **[857]** they were not as heavily timbered, that the country was rougher, very rough and mountainous, and that the streams were not big enough to drive logs in.

Q. Well, it was as heavily timbered as Puter represented, wasn't it? You found that to be a fact later, didn't you?

A. Later when I sent my men on there I found it was very heavily timbered.

Q. Didn't he send you this word before you ever sent him any money at all?

A. This information that the land was not as represented? Yes, sir.

(Testimony of Charles A. Smith.)

Q. But that he had agreed to pay $5.25, or could get it at $5.25 an acre, and you told him to take it at $5.25 an acre?

A. I told him I would take it, yes, from him.

Q. Did he tell you how much of it you could get at that time?

A. I don't remember as to that. He may have done so.

Q. Didn't you learn when you went out there that about half of the proofs had been made just two or three days before you got there?

A. I think I did.

Q. But you say that you didn't learn from Kribs prior to that time that the proofs had not been made?

A. I am quite sure that was the first information I had as to that; when I was there.

Q. Didn't it occur strange to you that Mr. Puter should be able to handle that number of entrymen, handle 24 of them and get rid of the Northern Pacific contests? A. You mean when I was out there?

Q. Yes.

A. Well, those were things that I didn't understand. I had bought the lands then and paid for them when I got [858] that information.

Q. You then conversed with Puter about securing the other 24 entries from the Northern Pacific in there? A. Yes, sir.

Q. And he promised to make an effort to get them for you? A. He promised to get them.

Q. At the same price?

A. I don't remember as to that. That may have been the agreement. I think so, yes. I am quite

(Testimony of Charles A. Smith.)

sure, because he reasoned that scrip of course being worth so much less than what I had paid for the land that he had no doubt at all he could get them for that price or even less.

Q. When did he say he would get them for you?

A. He said so at that time; about that time.

Q. I know he said about that time that he would get them for you but when did he agree to get them?

A. How soon he would get them?

Q. Yes. A. Why, in the very near future.

Q. Did he state that it would be better to wait until the patents had issued for the others?

A. I don't remember as to that. I don't think that there was anything said about that.

Q. Didn't you get an understanding from him that it would be advisable to wait until that time?

A. I don't remember that. The agreement was that he should get them in the very near future.

Q. Did he discuss with you the reason for having abandoned that many entries?

A. I don't remember that he told me that at all. Mr. Kribs told me that there had been some controversy.

Q. He told you what the controversy was, didn't he?

A. I don't remember as he went into details.

[859]

Q. Told you the Northern Pacific contested all of the entries? A. I don't remember as to that.

Q. And in order to save a portion of it, it was necessary to relinquish— A. Possibly.

Q. Necessary to relinquish 24 entries, and that

(Testimony of Charles A. Smith.)

they did relinquish them under an agreement with the Northern Pacific Company to dismiss their contests as to the balance?

A. I don't remember as to that.

Q. Don't remember whether he told you that?

A. No.

Q. You did understand that at any rate during the progress of acquiring titles to the lands?

A. I understood at this time when I come out there, which was on May 22d or 21st, if that was the day, I understood during that trip that there had been this contest.

Q. Did you meet McKinley there at that time?

A. I think not. I don't remember as I did.

Q. Do you recall going up on the boat from San Francisco with Puter to Eureka during that spring, and McKinley being with you?

A. I don't remember that. It is possible that I did.

Q. You know McKinley? A. I met him.

Q. When did you first meet McKinley?

A. I don't remember when I first met him. I don't remember as I met him on that trip. I may have met him during the summer.

Q. You did know him though in 1900?

A. I had met him during 1900.

Q. Ever talk to him about these lands?

A. No, sir. **[860]**

Q. Did you ever meet Mr. Tarpley, Dan Tarpley?

A. No, sir, not to my recollection.

Q. How long did you stay in Roseburg during that summer?

(Testimony of Charles A. Smith.)

A. I was there two or three different times and stayed there a couple of days each time.

Q. You were there looking after your interests in the acquisition of lands in Oregon during that summer? A. Yes, sir.

Q. And you went over matters thoroughly with Mr. Kribs at the different times you went there, as to what he was doing and how he was getting along?

A. Yes, sir.

Q. Who is this man John A. Willd?

A. He is my brother.

Q. What? A. My brother.

Q. Half brother? A. He is my brother.

Q. Where did he live?

A. He lived in this State.

Q. Not here in Minneapolis?

A. At Hoffman.

Q. He was not interested with you in your timber business here? A. No, sir.

Q. Now, you say you learned a few months after April, 1900, that the Government had suspended these entries, and some protest of some kind existed?

A. Yes, I remember that.

Q. You and Mr. Kribs had considerable correspondence about that matter, didn't you?

A. There may have been some correspondence in regard to that.

Q. At least you understood the situation thoroughly, that there was a protest there as to the good faith of the entrymen? A. Yes, sir.

Q. And it was necessary to make some representations to the **[861]** land department before pat-

(Testimony of Charles A. Smith.)

ents would issue?

A. I had some knowledge, of course, that the patents had been suspended, especially in the Puter—these lands in this suit here; in regard to the lands that came from Puter.

Q. And that it was necessary to take some action to secure patents to the lands?

A. I understood there was some controversy there. Just what it was I didn't know the details of.

Q. You understood that Mr. Kribs was employing attorneys to look after the matter, and taking such steps as he deemed proper?

A. I think I did, yes, sir.

Q. And did you know the firms that he had employed?

A. I think I did. I don't remember the—

Q. You did later along?

A. Later I understood that he had employed—

Q. Mitchell & Tanner?

A. Judge Tanner I think he told me.

Q. Before he employed Judge Tanner at all, of the firm of Mitchell & Tanner, didn't you understand that he had employed Carey & Mays at a compensation of $50.00 per claim? A. No, sir.

Q. When did you first learn about that?

A. I don't remember. Probably when his statement came in.

Q. How often did he send you statements?

A. About once a year.

Q. You understood that he was securing statements or affidavits from entrymen as to the character of the entries? A. No, sir.

(Testimony of Charles A. Smith.)

Q. What? A. No, sir.

Q. You knew they had been obtained for use?

A. No, sir. **[862]**

Q. Didn't Mr. Puter come here and talk to you about that, and didn't he write to you about it, and telegraph you about it? A. No, sir.

Q. What? A. No, sir.

Q. You are sure of that?

A. I am very sure of that, sir.

Q. Do you remember a Government agent by the name of Stratford who was working in connection with the matter?

A. I never heard of him until I saw his name mentioned in connection with this matter.

Q. You noticed from Mr. Kribs' statement that he had been paying considerable sums of money out in endeavoring to procure these entries, didn't you?

A. There were charges for attorneys' fees and expenses, yes, sir.

Q. You didn't hold them up?

A. How is that?

Q. You didn't hold any of them up?

A. Hold any of the items up?

Q. Yes.

A. I don't remember. There may have been some possibly. I don't remember as to that.

Q. Mr. Kribs was acting in your behalf in relation to those matters?

A. I held Mr. Kribs responsible for the securing of the titles.

Q. Yes. That is you expected him to exert himself to procure them, but you stood the expenses of

(Testimony of Charles A. Smith.)

securing the titles? A. Yes, sir.

Q. You recall giving Mr. Puter a letter of introduction to Congressman Eddy from this State, in relation to these lands?

A. I think I do, yes, sir. [863]

Q. You knew when you gave him that that there was trouble about the lands?

A. I knew that, yes, sir.

Q. And Mr. Kribs and Mr. Puter both explained to you what the charges were against the entries?

A. I don't remember as to that.

Q. You understood that they were being suspended upon the charge that the entrymen had had prior agreements with Puter and McKinley?

A. I don't remember that I ever knew anything about the details. I knew that the patents were hung up, as we called it, and I was urging Puter and Kribs continually to have the titles perfected.

Q. But you did understand that there was a charge that there had been an unlawful agreement between Puter and McKinley and the entrymen?

A. I don't think I so understood. I don't remember that.

Q. Well, you inquired what the reason was, didn't you? A. No, I don't think I did.

Q. You didn't want to know; you were not interested in finding out?

A. I don't think I did, because I held them responsible.

Q. I know about your holding them responsible, but you were continually putting up large sums of

(Testimony of Charles A. Smith.)

money to perfect the title; didn't that raise a query in your mind as to why you was paying out so much money to them?

A. Well, Mr. Kribs was getting lands, they were buying there, and money was put up. What the money was used for at that time I didn't know; whether the money was used for scrip or whether the money was used to buy lands from individuals, [864] or corporations, or whether the money was used for paying expenses, attorneys' fees, etc., that I had no information about.

Q. But you did know in relation to these claims that you had at least one firm of attorneys that you were employing, and that Mr. Kribs was rolling up expense bills in regard to these lands that you had purchased long before?

A. Personally I had no attorneys employed. I employed no attorneys.

Q. I know, but Kribs did for you?

A. I had never met Mr. Tanner in my life.

Q. You did know he was a partner of Senator Mitchell's? A. That I knew, yes.

Q. And that Mitchell was an influential man in the United States Senate?

A. I knew that Mr. Mitchell was in the United States Senate. As to his influence I had no knowledge.

Q. Now, right after you learned that these lands were in bad shape, you had Mr. Willd convey the lands to somebody else, didn't you?

A. Yes, sir, the lands were conveyed to somebody else.

(Testimony of Charles A. Smith.)

Q. About November, 1900? A. Possibly.

Q. And that was about the time that the suspending of these patents got sort of critical in your mind?

A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. A few months later you had the land conveyed to Mr. Hubert E. Rogers? A. Yes, sir.

Q. Mr. Rogers associated with you in business?

A. No, sir.

Q. Then in December, 1904, when the Lane fraud matters got to be agitated pretty seriously out in Oregon, you had the lands [865] conveyed to Mr. Werner?

A. The lands were conveyed to Mr. Werner, yes, sir. I don't remember when.

Q. How was it you didn't have these Linn & Lane Timber Company deeds recorded, Mr. Smith, that you gave to the Linn & Lane Timber Company for these lands and other lands? A. Why didn't I?

Q. Yes.

A. Well, there were several reasons; one reason was that I didn't consider it advisable to have the lands grouped in one concern, on account of the effect it would have on the values of lands. Another reason was on taxation. I find when large quantities of lands are grouped in one concern or one individual, that it seems to have quite a material effect on taxation, especially if that individual or concern is a non-resident.

Q. The fact that the Government had questioned your title, or the good faith of your title to these

(Testimony of Charles A. Smith.)

lands, and that Mr. Kribs had taken the stand in 1905 in a very prominent case out there in which he had given testimony regarding these lands, and the fact that he had paid the firm of which Senator Mitchell was a member considerable sums of money, and had delivered over to the Government numerous checks for large sums of money which he had stated had been paid to the Government officers and Government agents in perfecting the title to these lands, and which he had also paid in some instances to entrymen making affidavits for expediting these lands to patent, had nothing to do with it?

A. No, sir. I had no information as to any evidence which Mr. Kribs gave.

Q. You didn't know that Mr. Kribs had been the star witness **[866]** out there in the Mitchell case?

A. No, sir.

Q. And that the papers for several weeks came out with scare heads asserting that Mr. Kribs had made confessions in regard to his connection with land frauds, containing his picture distorted to suit the character of his confession?

A. I had no information as to that, no, sir.

Q. You didn't know about that at all?

A. No, sir.

Q. You didn't know about this correspondence being sent out there and destroyed?

A. No, sir.

Q. Hadn't some threat been conveyed to you that you yourself might be indicted in connection with these same lands?

(Testimony of Charles A. Smith.)

Mr. UELAND.—That is objected to as not proper cross-examination, irrelevant and immaterial.

A. Not in connection with these lands. There had been some information that my name had been used quite extensively, and that possibly—or that I had been considered before the grand jury, or possibly might be considered before the grand jury; but whether it was in connection with these lands or any other lands, I don't remember that.

Q. That information you did have long prior to the organization of the Linn & Lane Timber Company, and the conveyances by you to it?

A. Some years before, yes, sir. Yes, sir, that was one reason why I didn't want to record the deeds, because I didn't care to have newspaper notoriety.

Q. Now, in case No. 3319, the records did show that you were the owner of those lands?

A. I don't remember.

Q. Prior to the organization of the Linn & Lane Timber Co.? **[867]**

A. I don't remember as to that.

Q. Well, you recall that Mr. Kribs deeded you a three-quarter interest in those lands?

A. Yes, sir.

Q. And that that was long prior to the organization of the Linn & Lane Timber Company?

A. Yes, sir.

Q. Hadn't you your holdings in Coos County grouped under one apparent ownership prior to that time?

(Testimony of Charles A. Smith.)

A. No. It was scattered in the names of different people.

Q. What?

A. No, sir. It was scattered in the names of different people. Considerable of it in my name, considerable of it in other people's name.

Q. The bulk of it was in your name?

A. I don't remember as to that.

Q. And as a matter of fact the greater portion of those lands which you deeded to the Linn & Lane Timber Company which lay in Linn County, stood in your name quite a while prior to the organization of the Linn & Lane Timber Company?

A. A portion of them did.

Q. Well, the larger portion?

A. I don't think so, no, sir.

Q. As a matter of fact when you went up there to look at those lands it was generally known in that community that you were a buyer, in Linn County, and Multnomah County too, that you were a buyer of those lands down in Linn County?

A. I never owned an acre in Multnomah County.

Q. I say it was generally known in Multnomah County and Linn County that you were a buyer of lands in Linn County?

A. I am unable to affirm or deny that question.

[868]

Q. It was also generally known that Mr. Kribs was acting largely for you in connection with purchases of lands in Oregon during the year 1900 and the years following?

(Testimony of Charles A. Smith.)

A. I am unable to answer that question.

Q. In connection with those lands, those Puter lands, some few weeks before patents issued, Mr. Puter called upon you here in Minneapolis. Do you recall that?

A. He called upon me several times.

Q. And you and he had a settlement in regard to the Humbolt County lands, and at your conversation then he threatened, unless you settled with him for the Humbolt County lands, that he would proceed to Washington and see that all these Puter entries were cancelled?

A. I don't remember that.

Q. Don't recall that at all? A. No, sir.

Q. You recall having quite a spirited meeting with him? A. Yes, I do.

Q. Shortly prior to the issuance of the patents in that case?

A. My recollection is that that was after he had been to Washington one trip. Whether it was before the patents were issued or after, I am not sure. I am rather inclined to think it was after the patents were issued.

Q. The patents were issued in August, 1902, and this settlement that you had was in April, 1902?

A. Well, at the time we had the settlement, I don't think we had any particular controversy. I think the principal controversy was sometime after he demanded that money and I refused to give him the money.

Q. You refused to pay him upon the ground that

(Testimony of Charles A. Smith.)

he had misrepresented [869] the matter to you as to the amount of money he had paid out?

A. Well, there were other reasons.

Q. But don't you recall that prior to the time these patents issued that he made a threat that unless you did something, I don't know just what it was, that he would go to Washington and lay the whole transaction before the Secretary of the Interior or the Commissioner?

A. There may have been something of that kind. As I say, I am quite sure that the scrap was after he had been to Washington, and about the time that the last patents were issued. I am quite sure it was, because I think the argument he had was that now the patents were all issued and I still refused to pay him the money.

Q. Do you remember that after you had given him a letter of introduction to Eddy, that you telegraphed him not to see Eddy under any circumstances until you had seen him; that you had received a telegram from Fred, meaning Mr. Kribs, and he stated that he had matters working in good shape in Oregon? A. That may be. [870]

The reading over and signing of the foregoing depositions by the respective witnesses is waived by counsel for the respective parties. [871]

[Special Examiner's Certificate to Testimony, etc.]

(Title of Court and Cause.)

I, George F. Hitchcock, Jr., a Special Examiner appointed by said Court in the above-entitled cause,

do hereby certify that the foregoing depositions of Mrs. Ethel Steele, Charles L. Trabert, Edgar L. Mattson, John Lind and Charles A. Smith, witnesses produced, sworn and examined on behalf of the defendants herein, were taken by me at the time and place stated in the foregoing transcript thereof, pursuant to the order hereto attached; that said depositions were taken by me in shorthand, and transcribed on a typewriter under my direction; that the reading and signing of said depositions by the respective witnesses was expressly waived by the parties hereto; that the complainant was represented by its counsel, Mr. John McCourt, and the defendants by their counsel, Mr. A. Ueland and Mr. John Lind; that before being examined herein each of the witnesses above named was by me duly sworn to testify the truth, the whole truth and nothing but the truth relative to the issues herein.

I further certify that I am not of counsel, nor attorney for either of the parties in said depositions or caption **[872]** named, nor in any way interested in the result thereof.

I further certify and return that on the taking of these depositions the following exhibits were identified and offered in evidence, viz.: Defendants' Exhibits "M," "N," "O" and "P"; that Defendants' Exhibits "C" and "D," heretofore identified, were also offered in evidence, and these exhibits, together with "Government Exhibits 155 to 161," inclusive, forwarded by the Clerk of the above entitled court for use in the taking of these depositions, are returned to said Clerk under separate cover.

In testimony whereof, I have hereunto set my hand this 27th day of June, A. D. 1910.

(Signed) GEO. F. HITCHCOCK, Jr.,
Special Examiner.

Filed July 1, 1910. G. H. Marsh, Clerk. **[873]**

Defendants' Exhibit "C."

(G. F. HITCHCOCK, Jr., Special Examiner.)

THIS INDENTURE, Made this 4th day of June in the year *if* our Lord one thousand nine hundred and six between Charles A. Smith and Johanna A. Smith, his wife, of the County of Hennepin and State of Minnesota, parties of the first part, and Linn & Lane Timber Company, a corporation, of the County of Hennepin and State of Minnesota, party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of $15,000.00 *Dollars*, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns, Forever, all the tracts or parcels of land lying and being in the County of Douglas and State of Oregon described as follows, to-wit:

The North Half of the Northeast quarter (N. ½ NE.) the Northeast quarter of the Northwest quarter (N. E. N. W.) of Section Eight (8), the Southwest quarter of the Northeast quarter (S. W. N. E.) the East Half of the Northwest quarter (E. ½ NW.) the Northeast quarter of the Southwest quarter (N. E. S. W.) the West Half of the Southwest quarter

(W. ½ S. W.) the North Half of the Southeast quarter (N. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Ten (10), the North Half of the Northwest quarter (N. ½ N. W.), the Northwest quarter of the Southwest quarter (N. W. S. W.) and the South Half of the South Half (S. ½ S. ½) of Section Eleven (11), the West Half of the Southwest quarter (W. ½ S. W.) of Section Twelve (12), the Southeast quarter of the Northeast quarter (S. E. N. E.), the North Half of the Northwest quarter (N. ½ N. W.) the Southeast quarter of **[874]** the Northwest quarter (S. E. N. W.), the Southeast quarter of the Southwest quarter (S. E. S. W.), the North Half of the Southeast quarter (N. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Thirteen (13), all of Section Fourteen (14), the East Half of the Northeast quarter (E. ½ N. E.), the Northwest quarter of the Northwest quarter (N. W. N. W.) the North Half of the Southeast quarter (N. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Fifteen (15), the Southwest quarter of the Southwest quarter (S. W. S. W.) of Section Twenty (20), the East Half of the Northeast quarter (E. ½ N. E.) the West Half of the Northwest quarter (W. ½ N. W.) the Northeast quarter of the Southwest quarter (N. E. S. W.) the South Half of the Southwest quarter (S. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the Northeast quarter of the Northeast quarter (N. E. N. E.) the South Half of the Northeast quarter (S. ½ N. E.) the Northwest

quarter of the Northwest quarter (N. W. N. W.), the Southeast quarter of the Northwest quarter (S. E. N. W.) and the South Half (S. ½) of Section Twenty-three (23), the Northeast quarter of the Northeast quarter (N. E. N. E.) the West Half of the Northeast quarter (W. ½ N. E.) the West Half (W. ½) and the Northwest quarter of the Southeast quarter (N. W. S. E.) of Section Twenty-four (24), the Southwest quarter of the Northeast quarter (S. W. N. E.) the West Half (W. ½), the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Twenty-five (25), all of Section Twenty-six (26), all of Section Twenty-seven (27), the South Half of the Northeast quarter (S. ½ N. E.) the Northeast quarter of the Northwest quarter (N. E. N. W.) the South Half of the Northwest quarter (S. ½ N. W.) and the South Half (S. ½) of Section Twenty-eight (28), the Southwest quarter of the Northeast quarter (S. W. N. E.) the Southeast quarter of the Northwest quarter (S. E. N. W.) and the Southwest quarter (S. W. ¼) of Section Thirty (30), the North Half [875] of the Northeast quarter (N. ½ N. E.) the Southwest quarter of the Northeast quarter (S. W. N. E.) the Southwest quarter of the Southwest quarter (S. W. S. W.) and the North Half of the Southeast quarter (N. ½ S. E.) of Section Thirty-two (32), the North Half (N. ½) the East Half of the Southwest quarter (E. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Thirty-four (34), the North Half (N. ½) the Southwest quarter (S. W. ¼) the North Half of the South-

east quarter (N. ½ S. E.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Thirty-five (35), in Township Twenty-seven (27) South, Range Two (2), West of Willamette Meridian, containing 7740 acres more or less according to the Government survey thereof.

TO HAVE AND TO HOLD THE SAME, Together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, its successors and assigns, Forever.

IN TESTIMONY WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year last above written.

CHARLES A. SMITH. [Seal]
JOHANNA A. SMITH. [Seal]

Signed, sealed and delivered in presence of.
ETHEL STEELE.
CHARLES L. TRABERT.

STATE OF MINNESOTA,
COUNTY OF HENNEPIN,—ss.

This certifies that on this 4th day of June, 1906, before me the undersigned, Charles L. Trabert, a Notary Public in and for said County and State, personally appeared the within named Charles [876] A. Smith and Johanna A. Smith, his wife, to me personally known to be the individuals described in and who executed the same freely and voluntarily for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixes my seal the day and year in

this certificate last above written.

[Seal] CHARLES L. TRABERT,
Notary Public in and for the County of Hennepin, and State of Minnesota.

My commission expires the 30 day of Oct., 1909.

Endorsed on back:

535 7 Pd. 2.00
Deed C. A. Smith et ux. to
Linn & Lane Tbr. Co.
Douglas Co. Oregon.

State of Oregon,
County of Douglas,—ss.

I hereby certify that the within was recorded by me in Douglas County Records, Book of Deeds, Vol. 59, page 402, on the 5 day of Sept., 1908.

E. H. LENOX,
County Clerk.
R. C. Agee,
Deputy.

Filed Sep. 5, 1908. E. H. Lenox, County Clerk. By ———— Deputy Clerk.

Defendants' Exhibit "C." Filed July 1, 1910. G. H. Marsh, Clerk. [877]

Defendants' Exhibit "D."

(G. F. HITCHCOCK, Spec. Exam'r.)

THIS INDENTURE, Made this 4th day of June in the year of our Lord one thousand nine hundred and six between Charles A. Smith and Johanna A. Smith, his wife, of the County of Hennepin and State of Minnesota, parties of the first part and Linn & Lane Timber Company, a corporation, of the

County of Hennepin and State of Minnesota party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of $5000.00 Dollars, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns, Forever, all the tracts or parcels of land lying and being in the County of Lane and State of Oregon—described as follows, to wit:

The Northeast quarter (N. E. ¼), the north half of the Northwest quarter (N. ½ N. W.) of Section Twenty (20), the East Half of the East Half (E. ½ E. ½) the Northwest quarter (N. W. ¼) the North half of the Southwest quarter (N. ½ S. W.) and the Southeast quarter of the Southwest quarter (S. E. S. W.) of Section Twenty-one (21), the North Half of the Northeast quarter (N. ½ N. E.) of section Twenty-two (22), the North Half (N. ½) of Section Twenty-three (23), the Northwest quarter (N. W. ¼) of Section Twenty-four (24) the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter(S. E. S. E.) of Section Twenty-five (25), the Southwest quarter of the Northeast quarter (S. W. N. E.) the North Half of the Northwest quarter (N. ½ N. W.) the Southeast quarter of the Northwest quarter (S. E. N. W.), the Southwest quarter of the Southwest quarter (S. W. S. W.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Twenty-seven (27), the Southwest quarter of the Northeast quarter (S. W. N. E.) the South [878] Half of the North-

west quarter (S. ½ N. W.) and the South Half (S. ½) of Section Twenty-eight (28), all of Section Thirty (30), the North Half of the Northeast quarter (N. ½ N. E.) of Section Thirty-three (33), the West Half of the Northeast quarter (W. ½ N. E.) the Northwest quarter (N. W. ¼) of Section Thirty-four (34), the North Half of the Northeast quarter (N. ½ N. E.) the North Half of the Northwest quarter (N. ½ N. W.), the Southeast quarter of the Northwest quarter (S. E N. W.) and the South Half of the Southwest quarter (S. ½ S. W.) of Section Thirty-five (35) in Township Fifteen (15), South, Range Three (3) East of Willamette Meridian.

The Northeast quarter (N. E. ¼) of Section Eighteen (18), Township Twenty-three (23) South, Range One (1) West of Willamette Med. containing 3371.28 acres more or less according to the Government survey thereof.

TO HAVE AND TO HOLD THE SAME, Together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, its successors and assigns Forever.

IN TESTIMONY WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year last above written.

CHARLES A. SMITH. [Seal]
JOHANNA A. SMITH. [Seal]
_____ [Seal]
_____ [Seal]

Signed, sealed and delivered in presence of

ETHEL STEELE.
CHARLES L. TRABERT,

STATE OF MINNESOTA,
COUNTY OF HENNEPIN,—ss.

This certifies that on this 4th day of June, 1906, before me the undersigned, Charles L. Trabert, a Notary Public in and for said County and State, personally appeared the within named Charles [879] A. Smith and Johanna A. Smith his wife, to me personally known to be the individuals described in and who executed the same freely and voluntarily for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF. I have hereunto set my hand and affixes my seal the day and year in this certificate last above written.

[Seal] CHARLES L. TRABERT.
Notary Public in and for the County of Hennepin, and State of Minnesota.

My commission expires the 30 day of Oct., 1909.

Endorsed on back:

536 6 12370

Deed

C. A. Smith et ux. to Linn & Lane Tbr. Co.

Lane County, Ore.

State of Oregon,
Lane County,—ss.

I hereby certify that the within instrument was filed for record this 5 day of Sep. 1908, at 8 o'clock A. M., and duly recorded in Book 79, page 83 Lane County Deed records.

E. U. LEE,
County Clerk.
Per C. D. Lee,
Deputy.

Fred'k A. Kribs,
2.00 330 Chamber Com. Portland, Or.
R. J. C.

Defendants' Exhibit "D." Filed July 1, 1910. G. H. Marsh, Clerk. **[880]**

Defendants' Exhibit "M."

(G. F. H., Spec. Ex.)

PAID.

C. A. SMITH TIMBER COMPANY.

Minneapolis, Minn., Jul. 31, 1906. No. 3949.

C. A. S. T. Co.

Pay to the order of Mrs. Ethel Steele $50.00
Not over Fifty Dollars 50
Fifty and 00/000.....Dollars.

C. A. SMITH TIMBER COMPANY.
By CHARLES L. TRABERT,
~~Vice president.~~
Secretary.

To THE SECURITY BANK OF MINNESOTA, MINNEAPOLIS.

Endorsements:
Mrs. Ethel Steele.
Pay to the order of The Washington Trust Company
Seattle, Wash.
Wilson & White Co. Rainier
Grand Hotel.
Pay to the order of South Omaha National Bank
South Omaha, Neb.
The Washington Trust Co. of Seattle
M. D. Barnes, Cashier.
All prior endorsements guaranteed.

Pay First Natl. Bank, Minneapolis, Minn. or order,
South Omaha National Bank
So. Omaha, Neb.
H. C. Bostwick, Vice-Prest.
4 Paid through Minneapolis Clearing House 4
Aug. 11, 1906

Defendants' Exhibit "M." Filed July 1, 1910. G. H. Marsh, Clerk. By J. W. Marsh, Deputy. [881]

Defendants' Exhibit "N."

(G. F. H., Spec. Ex.)

STATE TREASURER'S OFFICE, MINNESOTA.
St. Paul, May 24, 1906.

Received of Linn and Lane Timber Company Seventy-five $\frac{\#}{100}$ Dollars, Being for Fees paid in accordance with act approved (April 24, 1889.) on (~~March 18, 1899~~) original capital stock, amounting to $100,000.00.

$75.00

[State Seal] J. H. BLOCK, Jr.
State Treasurer.

Defendants' Exhibit "N." Filed July 1, 1910. G. H. Marsh, Clerk. [882]

Defendants' Exhibit "O."

(G. F. H., Spec. Ex.)

THE STATE OF MINNESOTA.
DEPARTMENT OF STATE.

BE IT KNOWN, that whereas Charles A. Smith, Johanna A. Smith, and John Lind,

Have associated themselves with the intention of forming a corporation under the name of "LINN

AND LANE TIMBER COMPANY," for the purpose of buying, holding and selling timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, etc., with a capital of ONE HUNDRED THOUSAND ($100,000.00) Dollars, and have complied with the statutes of this State in such case made and provided, as appears from the articles of incorporation and the affidavit of proof of publication filed in this office.

Now, therefore, I, P. E. HANSON, Secretary of State of Minnesota, do hereby certify that said Charles A. Smith, Johanna A. Smith, and John Lind, their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of "LINN AND LANE TIMBER COMPANY," with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

WITNESS my official signature hereunto subscribed and the seal of the State of Minnesota hereunto affixed, this Thirty-first day of May in the year of our Lord one thousand nine hundred and six.

[State Seal] P. E. HANSON,
Secretary of State.

Defendants' Exhibit "O." Filed July 1, 1910. G. H. Marsh, Clerk. **[883]**

Defendants' Exhibit "P."

(G. F. H., Special Examiner.)

Fee Book No. 1,
Page No. 55.

Certificate of Authority—Foreign Corporation.
Corporation
No. F-341

STATE OF OREGON.
OFFICE OF THE SECRETARY OF STATE.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

CERTIFICATE OF AUTHORITY TO ENGAGE IN BUSINESS WITHIN THE STATE OF OREGON.

KNOW YE, That whereas, LINN AND LANE TIMBER COMPANY, a corporation organized and existing under and pursuant to the Laws of Minnesota, with its Home Office at Number 410 Andrus Bldg. Street, in the City of Minneapolis, Minnesota, did, on the 25th day of June, 1906, file in the office of the Secretary of State of the State of Oregon, a declaration of the desire and purpose of said Corporation to engage in business within the State of Oregon, which said declaration was accompanied with a duly authenticated copy of the Certificate of Incorporation of said Corporation; has paid the declaration and annual license fees, and has complied with the requirements of "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903, preliminary to the issuing of this

CERTIFICATE OF AUTHORITY TO ENGAGE IN BUSINESS WITHIN THE STATE OF OREGON.

Now, therefore, I, F. I. Dunbar, Secretary of State of the State of Oregon, do hereby certify that LINN AND LANE TIMBER COMPANY a corporation organized and existing under and pursuant to the laws of Minnesota, has, on the 25th day of June, 1906, filed in the office of the Secretary of State of the State of Oregon, a declaration of its desire and purpose to engage in business within the [884] State of Oregon, accompanied by a duly authenticated copy of the Certificate of Incorporation of said Corporation, satisfactory in substance and form, as required by the provisions of "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903, showing that the full name under which it proposes to transact business is LINN AND LANE TIMBER COMPANY; that the name of the State or Country under whose laws it was organized is Minnesota; that the location of its Home Office is at Number 410 Andrus Building Street, in the City of Minneapolis, Minnesota; that the date of its formation or incorporation was the 31st day of May, 1906; that the amount of its Capital Stock is One Hundred Thousand ($100,000) Dollars; that the nature of the pursuit, business or occupation in which it is authorized to engage is to buy, hold and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on

the same; to carry on logging operations and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale. That the location of the Principal Office within the State of Oregon is at Number 330 Chamber of Commerce Street, in the City of Portland, in the County of Multnomah; that the name of its attorney-in-fact, constituted and appointed in accordance with the provisions of Section 6 of "An Act to provide for the licensing of Domestic [885] Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903, is FRED *J.* KRIBS whose business address is Number 330 Chamber of Commerce Street, in the City of Portland, in the County of Multnomah; that the names and addresses of its principal officers, and of its directors or trustees, are as follows:

Names.	Office.	Postoffice Address.	
Charles A. Smith,	President & Director,	Minneapolis,	Minnesota
Vernon A. Smith,	Secretary,	"	"
Johanna A. Smith,	Vice-Pres. & Director,	"	"
Nann A. Smith,	Treasurer,	"	"
John Lind,	Director,	"	"

—that the name and address of its General Agent within the State of Oregon is FRED. A. KRIBS,

Number 330 Chamber of Commerce Street, in the City of Portland, in the County of Multnomah; and that said declaration and statement and duly authenticated copy of Certificate of Incorporation of said Corporation are now on file in my office, as required by law.

I FURTHER CERTIFY, That said Corporation has furnished satisfactory evidence of its legal existence and of its authority, under the laws of its domicile, to engage in the occupation, business, or pursuit stated in said declaration, and that it has paid the declaration and annual license fees required by law, as follows: For filing declaration, Fifty and 00–100 ($50.00) Dollars, and for annual license fee for the current fiscal year ending June 30, 1906, 82/100 ($.82) Dollars.

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon. Done at the Capitol, at Salem, Oregon, this 25th day of June, 1906.

[State Seal] F. I. DUNBAR,
Secretary of State.

Filed July 1, 1910. G. H. Marsh, Clerk. **[886]**

And afterwards, to wit, on the 12th day of September, 1910, there was duly filed in said court, an opinion, in words and figures as follows, to wit: **[887]**

[Opinion.]

In the Circuit Court of the United States for the District of Oregon.

No. 3319.

UNITED STATES OF AMERICA,

Complainant,

vs.

C. A. SMITH, F. A. KRIBS, C. J. SWENSON, O. J. and W. R. MEALEY, J. A. THOMPSON, and Entrymen, and LINN & LANE TIMBER COMPANY,

Defendants.

No. 3320.

UNITED STATES OF AMERICA,

Complainant,

vs.

NILS O. WERNER et ux., THE FIRST TRUST & SAVINGS BANK OF ILLINOIS, LINN & LANE TIMBER CO., ROBERT F. GREACEN, H. E. ROGERS, JOHN A. WILLD, C. A. SMITH, F. A. KRIBS, S. A. D. PUTER, JOHN L. GREEN, THOS. WILSON et al.,

Defendants.

JOHN McCOURT, U. S. Attorney for Government.

A. H. TANNER, Attorney for Defendant Kribs.

W. W. BANKS and L. H. TARPLEY, Attorneys for Entrymen.

DOLPH, MALLORY, SIMON & GEARIN, and UELAND, LIND & JEROME, Attorneys

for Defendants Smith and Werner and L. & L. T. Co.

R. S. BEAN, District Judge:

These two suits were brought by the Government to set aside and vacate divers patents for public lands issued to sundry persons under the Timber & Stone Act, and were tried and submitted together. There are 28 patents involved in case 3320 and 17 in case 3319. The filings in 3320 were made on January 19, 20, 22, 23 and 31, and on February 1 and 26, 1900, and final proofs were made on April 18, 19, 20 and May 16. The land was [888] conveyed at the time or within a few days after final proof to John A. Willd in trust for defendant C. A. Smith. On November 2, 1900, Willd conveyed it to defendant Greacen; February 11, 1901, Greacen conveyed to Rogers; and December 21, 1904, Rogers conveyed to Werner, all in trust for Smith, which deeds were all promptly recorded and the legal title stood in the name of Werner until it was subsequently conveyed to defendant Linn & Lane Timber Company as hereinafter stated.

The entries in 3319 were made in May, June and July, 1900; final proof submitted in August and October, and the land conveyed by the several applicants to the defendant Kribs in trust for Smith about the date of final proof.

On October 24, 1904, Kribs conveyed an undivided three-quarters thereof to Smith, and on December 28, of the same year conveyed the other undivided one-quarter to Swenson in trust for Smith, which deeds were also promptly placed of record. The title thus stood until it was subsequently conveyed to the Linn

& Lane Timber Company, as hereinafter stated.

After the several applications in 3320 had been filed and prior to final proof, a special agent of the Land Department, who made a partial investigation of the matter, reported that he had reason to believe they were fraudulent, and the Commissioner of the General Land Office subsequently directed Special Agent Stratford to investigate the several entries, as well as those in 3319, and report thereon. On March 9, 1901, Stratford reported recommending the issuance of patents, but his report being unsatisfactory, he was requested to continue his investigations. During the summer of 1901, Stratford obtained affidavits from the several entrymen and from defendants **[889]** Puter and Kribs, and one McKinley, which he later submitted to the Department, together with a report in which he intimates that, in his opinion, the entries were fraudulent and patents should be withheld. In March, 1902, A. R. Greene, a special representative of the Secretary of the Interior, made a report to his superior giving at some length the circumstances surrounding the entries, but without accompanying proof or recommendations. Subsequently the Secretary of the Interior directed the Commissioner of the General Land Office to transmit the several reports and matters concerning these entries to his office and after examination, the Secretary, on the 17th of May, 1902, directed that the claims be relieved from suspension and that patents issue therefor, which was done accordingly. The patents involved in case 3320 are dated August 12, 1902, eight of those in 3319, the

9th of July, 1902, and the remainder August 12, of that year.

In May, 1906, the defendant Smith, having previously acquired about 52,000 acres of timber lands in Linn, Lane and Douglas Counties, including those involved in these suits, organized under the laws of Minnesota, a corporation known as the Linn & Lane Timber Company, with capital stock of $100,000, divided into 1000 shares of $100.00 each, for the purpose of taking and holding title to these lands. 998 shares of stock were subscribed by Smith, and one share each by his wife and his attorney. Immediately after the organization of the corporation by the election of Smith as President, Johanna Smith, his wife, as Vice-President, Vernon Smith, his son, as Secretary, and Nan A. Smith, his daughter, Treasurer, and on June 4, 1906, Smith tendered to the directors of the corporation, consisting of himself, **[890]** his son and his wife, a deed executed by himself and wife for his lands in the counties referred to, in payment of the stock of such corporation, and the same was accepted. On May 28 and August 15, 1907, respectively, Swenson and Werner, at Smith's request, conveyed the interests held by them to such corporation. The deeds from Smith, Swenson and Werner to the corporation were retained by Smith and not filed for record in the proper county until the 9th day of September, 1908, more than six years after the issuance of the patents involved in these cases.

The bills of complaint in these suits were filed on May 25, 1908. In case 3320 the majority if not all the entrymen were made parties, also Werner,

Greacen, Rogers, Smith, Kribs and Puter. The bill alleges that prior to the several entries involved in the suit, an unlawful agreement was entered into between Puter, Smith, Werner, Willd, Greacen, Rogers and Kribs, together with other persons to the complainant unknown, to defraud the Government out of the title to the lands in this suit by procuring persons to enter the same for the use and benefit of such conspirators, and that Smith acquired the title with notice of such fraud. In case 3319, the several entrymen, together with Smith, Kribs. Swenson, O. J. and W. R. Mealey and J. A. Thompson were made parties. The bill charges a similar unlawful agreement or conspiracy between Smith, Kribs, Swenson, O. J. and W. R. Mealey and J. A. Thompson, and other parties to the complainant unknown, and that Smith had full knowledge of such fraud when he acquired title. Subpoenas ad respondendum were issued upon the filing of the bills and placed in the hands of the marshal for service and were in due time served upon the resident defendants. **[891]** Smith, Swenson and Werner were nonresidents of the state and in July the Marshal returned the *supe*nas without service. Upon July 27, upon the application of the District Attorney, a warning was issued to them which was subsequently duly served. In September and October, Smith. Kribs and Werner, and perhaps some of the other defendants, filed pleas in abatement alleging that the property in controversy had been conveyed to and was owned by the Linn & Lane Timber Company, prior to the commencement of the suits, and that it was therefore an indispensable party. On

November 16, the complainant filed amended bills making the Linn & Lane Timber Company a party, and subpoena was issued and placed in the hands of the marshal for service upon its resident agent and service was subsequently had. The amended bills contain substantially the same allegations as the originals, with the addition that the Linn & Lane Timber Company was organized by Smith for the purpose of defrauding the Government and to consummate the fraudulent acquisition of title to the lands involved in these two suits; that the deed from himself to the company was not made in fact until after the commencement of these suits, but was ante-dated for the fraudulent purpose, and that all the deeds were concealed and kept from record in pursuance of such fraudulent purpose. Answers were subsequently filed denying the averments of the bill and setting up as affirmative defenses (1) that Smith and the Linn & Lane Timber Company were purchasers of the property in good faith and without notice of any fraud. (2) That the decision of the Secretary of the Interior directing that the claims pass to patent is conclusive on the Government in this suit. And (3) that the suits are barred by the statute of limitations because not commenced against [891½] the Linn and Lane Timber Company within six years from the date of patents. Replications were filed in due time and upon the issues thus joined, the evidence was taken in open court and the cases submitted for decision upon the law and the facts.

The evidence is voluminous and I shall not attempt to review it in detail, but shall state briefly the con-

clusions reached after a careful consideration of the testimony and the law applicable thereto.

There are substantially four questions presented for decision; first, whether the entries involved in these two suits were fraudulent; second, whether the defendant, C. A. Smith was a party to such fraud or a purchaser of the property in good faith for a valuable consideration and without notice thereof; third, whether the Government is concluded by the decision of the Secretary of the Interior that the entries should be passed to patent; and fourth, whether the suits are barred by the statute of limitations.

Upon the first question, but little need be said. It is, I think, very clearly established by the testimony that all the entries involved in both suits were fraudulent. In 3320, the testimony shows that early in Januaty, 1900, one of the Mealeys, who is a defendant in 3319, called upon McKinley at Albany and told him that there was a large tract of valuable timber land belonging to the Government in the eastern part of Linn County, some thirty or forty miles distant from Albany, which had recently been surveyed; that the Northern Pacific Railway Company then had cruisers in the timber estimating it, preparatory to taking it under the lieu land law, and inquired of McKinley whether or not some method could be devised by which the title could be acquired. McKinley thereupon interviewed the defendant, Puter, **[892]** with whom he had been previously operating very largely in timber lands in this State, and after a conference between them, it was agreed that they would acquire the title by

procuring persons to make applications for the land under the Timber & Stone Act, and would subsequently sell and dispose of it if they were able to do so. In pursuance of this understanding, they entered into an agreement with Mealey to pay him $10.00 for each claim he would show them or applicants furnished by them, and persons were thereupon solicited to make application for the land. Puter and McKinley agreeing to meet all expenses, pay the purchase price of the land, and each applicant from $75.00 to $100.00 for his trouble. Fifty-seven persons were thus procured to make applications to enter lands under the Timber & Stone Act. Many of these persons resided in Albany and Salem, and some of them in Portland. They were taken in groups by McKinley or some of his assistants to Roseburg where they made the filings, the expenses incident to the trips being paid by McKinley. After the filings had been made, McKinley arranged for the publication of notices of final proof, and when the proper time arrived notified the applicants and took them to Roseburg, paid all their expenses and upon the making of final proof, they were paid the stipend agreed upon. It is clear that none of the applicants took the land for their own use and benefit, but for the use and benefit of Puter and McKinley.

The same may, I think, be said of the entries involved in case 3319. They were all made through the defendants the Mealey Brothers and Thompson with the understanding on the part of the several entrymen that all expenses and the purchase price of the property would be [893] paid, and that

each applicant would receive $50.00 for his trouble. It is true there was no express agreement with the several applicants in either case that the entries should be made for the use and benefit of another, but this is the effect of the entire testimony. As Puter states in his testimony, the conspirators studiously avoided entering into such an express contract or agreement, for they knew it would be such an evidence of fraud as would invalidate the entry, but caused it to be reported, and the applicants to be advised by other parties that if they would make the applications, they would receive upon making final proof, the stipulated sum and they acted on such understanding in making the applications and subsequently conveying the property as directed by Puter and McKinley and Mealey.

The next question is whether or not Smith was a party to the fraud or a purchaser of the property in good faith and for a valuable consideration and without notice.

The evidence in 3320 shows that immediately after the first entries were made, Puter went east for the purpose of looking up a purchaser for the land. After interviewing several parties, he finally interested the defendant Smith who gave him a letter of introduction to his (Smith's) agent or representative on the coast, the defendant Kribs. Puter met Kribs in San Francisco and presented this letter of introduction some time in February or about the 1st of March, 1900, and later, about the middle of March, Smith came to San Francisco, and there he and Kribs had an interview with Puter about the matter. The parties do not agree as to what transpired at that

interview. Kribs says that Puter told them that he had located 57 pieces of land in Oregon and had [894] agreed to furnish the locators money with which to make final proof for which he (Puter) was to receive a location fee of $200.00 for each claim; that the time was approaching when final proof must be made and that he had had considerable trouble to raise the money and desired to make an arrangement by which the applicants could borrow the necessary money with which to make final proof and pay the location fee; that he gave a description of the land, the quality and quantity of timber thereon and said that the land had been taken by "a lot of poor fellows" and that after they had proved up there would be but little trouble in purchasing it from them. Smith's version of the transaction does not accord with that of Kribs. Smith says Puter claimed that he had eight or nine thousand acres of land in Linn County for sale; that it would average 75,000 feet of timber to the acre, was comparatively level and a splendid logging proposition; that the timber was a fine quality of yellow fir and was tributary to driving streams which would make it practicable to drive the logs to Portland; that he offered to sell the lands for $6.00 an acre, and "I told him, in substance, that if the timber was as he claimed, and the topography of the country and the streams I would take the lands. Mr. Kribs was present at the conversation, and then we had an understanding there at that time that some time in the near future when Mr. Kribs would get up, he would go and look these lands over, and if he found the lands as Mr. Puter claimed, then

I would take them. In other words, Mr. Kribs should be the judge whether the lands and everything was in accordance with the representations of Mr. Puter." Smith also testifies that there was nothing said concerning the title to the lands or of the entries having been made [895] under the Timber & Stone Act, or that it was necessary that final proof should be made before they could be disposed of. In this regard, Smith is corroborated by Puter, who testifies that he offered the lands for sale to Smith and that Smith agreed that Kribs should come to Oregon, examine them and if he found them satisfactory, to make the purchase. So I take it to be clearly established that Kribs was the agent of Smith with power and authority to purchase the lands and came to Oregon for that purpose. He arrived in Albany about the 1st of April, 1900. Prior to that time, the Northern Pacific Railway Company had filed a contest against each of the entries on the ground that they were fraudulent, alleging that they were not made for the use and benefit of the several entrymen but for other parties. McKinley was under arrest charged with subornation of perjury in the matter of such entries. Kribs was advised of these facts, but notwithstanding he had operated in timber lands for some time and was familiar with the requirements of the Timber & Stone Act, he went ahead and examined the land and concluded to purchase it from Puter for Smith, but on account of the controversy over the title, the price was reduced to $5.25 an acre. Subsequently when the time arrived for the first applicants to make final proof, a hearing was begun on

the contest of the Northern Pacific Railway Company and after it had continued for about two days, it was postponed in order that Puter might effect a compromise with the Railway Company. Kribs was in Roseburg (where the local land office is located and the hearing had) during this time and knew of these matters. After the hearing had been postponed, Puter went to Tacoma, the head office of the Northern Pacific Railway Company, and there a compromise was entered [896] into between him and the Railway Company, by which he was to secure relinquishments from twenty-four of the applicants, and the Railway Company was to dismiss its contest as to the remainder. The agreement was carried into effect. Puter secured the twenty-four relinquishments, compromising with the applicants by paying each of them about $25.00 therefor, in place of the $100.00 first agreed upon, and on the 18th of April, 1900, the Railway Company dismissed its contest as to the remainder. The several entrymen were thereupon notified by Puter and McKinley, and on the same day sixteen of them appeared at the Land Office and tendered their final proof. After the final proof papers had been made and signed by the applicants, but before they were accepted by the Land Office, the applicants were taken into the office of Kribs' attorney, adjoining that of the Land Office, and there executed to Kribs a mortgage on the lands described in their several applications, to secure the payment of the sum of $600.00. After these mortgages had been executed, Kribs paid to the Land Office the purchase price of the land and the neces-

sary fees, and furnished the money with which each of the applicants was paid the stipulated sum of $75.00 or $100.00 for making the entry. A few days later and within a week, deeds were secured from all these applicants conveying the land, by Kribs' direction, to John A. Willd in trust for the defendant Smith, which deed was delivered by Puter to Kribs, and Kribs thereupon paid to him the balance of the purchase price of the land. The same course was pursued in regard to each of the other applicants when they made their final proof. The money used by Kribs for this purpose was furnished by Smith and Kribs was acting for Smith in the transaction.

The lands involved in case 3319 are adjoining or in the same vicinity as the lands involved in 3320. Soon [897] after Kribs and perhaps Smith had visited that section of the country and examined the timber growing on the Government land, it became currently reported in the community that any person located upon timber land by the defendants Mealey and Thompson would receive $50.00 for doing so. In pursuance of this rumor and report, the several applicants whose patents are involved in the suit applied to the Mealeys and Thompson to be located upon Government land, and were so located. They were taken to Roseburg to make final proof by the Mealeys or Thompson, all the expenses of the trip being paid, both attending the initial filing and the final proof. When the final proofs were submitted, the same course was pursued in the matter of the mortgage and transfer of the property as in 3320, except that the deeds were made by the appli-

cants to Kribs in trust for Smith. The money with which to pay for the land, the Land Office fees and the stipulated stipend to the several applicants was Smith's money and furnished by Kribs, and the transaction was for Smith's benefit. There is no direct testimony in this case that there was any understanding or agreement with Kribs to furnish the money with which to pay for the land, and pay the several expenses attending the location, and the amount due the locators, prior to the initial application, but it seems to me that the conclusion is irresistible that such was the case. Neither the Mealey Brothers nor Thompson had any money with which to carry on this enterprise. The land was in the vicinity of that acquired by Smith through Puter and McKinley. It was practically the same character. The filings were made after Kribs had commenced acquiring title in that vicinity. Mealey was familiar with this and had assisted Puter and McKinley [898] in their enterprise. The same method was pursued in order to acquire title, and I am of the opinion that the transaction was substantially of the same character and for the same purpose. I have no doubt that Kribs not only had knowledge of the fraudulent character of the entries involved in these cases, but was an active participant in consummating such fraud. He was advised of the contest of the Railway Company, of McKinley's arrest, and of the hearing of such contest before he consummated the deal. In addition to this, the circumstances surrounding the transaction, the manner in which it was carried out, and the apparent attempt to conceal its

real nature are strong badges of fraud, and I think no one can read this record without coming to the conclusion that it was a fraudulent transaction to which Kribs was a party. It may be true that Smith, his principal, had no actual knowledge of such fraud, although the evidence would be more satisfactory upon that point if the correspondence between him and Kribs and Puter concerning this transaction had not all been destroyed about the time the matter was being investigated by a Federal Grand Jury, and it was rumored or reported that Smith and Kribs were liable to be indicted and that the Government was contemplating bringing a civil suit to cancel and set aside the patents. But whether Smith had actual knowledge of the fraud or not, Kribs was his agent, authorized to purchase the property and whatever knowledge Kribs acquired is chargeable to Smith.

I conclude therefore that Smith was not a *bona fide* purchaser for value and without notice of the fraud, and cannot claim the rights of such in this suit.

[899]

The next question is whether the decision of the Secretary of the Interior directing these claims to be passed to patent is conclusive in this suit. It was settled by the Supreme Court in U. S. vs. Minor, 114 U. S. 233, that the Government has the same remedy to set aside a patent for land on the ground of fraud in procuring it as an individual would have to annul his deed under like circumstances, and that the decision of the Department in passing the claim to patent is not conclusive when such decision was obtained by fraud. Now, the action of the Secretary of the In-

terior in directing these claims to be passed to patent was based upon the reports of Special Agents and the accompanying *ex parte* affidavits of the several claimants, and Puter, McKinley and Kribs. It was clearly shown on the trial that these affidavits were false and did not state the actual facts in the case, and they were known to be such to Kribs, the agent and representative of Smith. Indeed the testimony in this case strongly shows that one of the special agents was corrupted by Kribs, and that the applicants were coached by him or with his knowledge and consent, to make the false affidavits. He admitted upon the trial that his own affidavit did not state the actual facts of the transaction but was an attempt on his part to make it appear that his connection with the matter was the mere loaning of money to the several applicants with which to make the final proof, and that the purchase of the land was an independent transaction with which he had no connection. Having thus induced the Secretary of the Interior to pass these claims to patent upon false and fraudulent testimony, with knowledge of its character, it certainly cannot be successfully contended that the decision of that officer is conclusive upon the Government. Having knowingly obtained such decision by perjury and subornation of perjury, it cannot be relied upon as a defense. **[900]**

The next, and what I deem the most important and difficult question in this case, is the statute of limitations. The statute provides that "suits by the United States to vacate and annul patents heretofore issued shall only be brought within five years

from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patent." 26 Stat. at L. 1093. These suits were not commenced against the Linn & Lane Timber Company until more than six years after the date of the issuance of the patents. As a general rule, the holder of the legal title is an indispensable party to a suit to set aside a patent.

U. S. vs. Winona & St. P. R. 67 Fed. 948.

U. S. vs. C. P. R. R., 11 Fed. 449;

and the statute of limitations does not cease to run in his favor until he is made a party to the suit and process issued and placed in the hands of the marshal with the bona fide intent that it shall be served. Miller vs. McIntyre, 6 Peters, 60. But the identity of Smith and the Linn & Lane Timber Company and their relation to the title to the property in controversy is such that I do not think the rule should be applied in this case. Smith is the real party in interest and the beneficial owner of the property. The corporation was organized by him as a mere holding concern. He owned all of its capital stock. He and the members of his family composed its Board of Directors and were the officers of the corporation. In fact Smith was the corporation and the corporation was Smith. The question of the statute of limitations should be therefore determined by the time the suit was commenced against Smith and the holders of the record title, and not against the mere holding corporation. If, prior to the commencement of these suits, Smith had conveyed or

caused the property to be conveyed to some natural person in trust for him, but had withheld the deeds from record and kept the matter secret **[901]** until the six years had expired, it would hardly be contended that the action is barred, and no greater effect should be given to the organization of the corporation and the deeds to it. The suit was commenced against Smith when the warning order was issued to him and placed in the hands of the proper officer for service.

U. S. vs. Lumber Co., 80 Fed. 309, and 85 Fed. 827.

At that time the statute had not run except as to the eight patents issued July 9, 1902. As to them, the suit is barred for, in my judgment, the statute begins to run from the date of the issuance of the patent and not from the discovery of the fraud. The language of the statute is plain and leaves no room for construction. It says suits of the United States to vacate or annul patents shall only be brought within six years after the issuance of patent. As said by Mr. Justice Gilbert, in speaking for the Circuit Court of Appeals for the 9th Circuit, in 85 Fed. *supra:* "There is no room for construction It is clear that Congress has said that all suits by the United States to vacate patents shall be brought within the period limited by the act." The object of this statute is to extinguish any right the Government may have in the land and vest a perfect title in the adverse holder after six years from date of the patent, regardless of any mistake or error in the

Land Department, or the fraud or imposition of the patentee.

U. S. vs. Winona & St. P. R. R., 165 U. S. 463.

U. S. vs. Chandler-Dunbar Co., 209 U. S. 447.

A point is made of the fact that subsequent to the organization of the corporation and before the filing of the original bills of complaint in these suits, Smith had sold 15 shares of the capital stock and pledged other shares to secure payment of an indebtedness of his, but this does not change the status of the matter or the rights of the parties to these suits. We are not concerned at this time **[902]** with the status of the stockholders, but with the corporation itself. It is still the holder of the title and has not disposed of it to a *bona fide* purchaser for value. It is admitted that it took title charged with whatever infirmities existed in the hands of Smith. It is therefore in no sense a *bona fide* purchaser or entitled to the protection of such, but is a mere holding corporation organized by Smith to suit his convenience and as a holder of the legal title for his use and benefit. Smith is a party to the suit and it was commenced against him within six years from the date of issuance of all the patents except those issued in July, 1902, and I do not think that the defendants, either the corporation or Smith, can, under these circumstances, urge this statute as a bar to these suits, when it appears in the testimony that after the property had been conveyed to the corporation by Smith, the deeds were retained by him and the transfer not made public until after the statute of limitations had run.

I am aware that the soundness of this conclusion is not free from doubt, but I believe it to be in accordance with equity, justice and sound reason.

When these cases were called for trial, the complainant made an application to amend the bills of complaint by alleging the value of the property involved, so that it might recover damages for the fraud in case it should be unable to obtain the primary relief prayed for in the bills. The ruling on this motion was reserved until the final decision in the case with permission to the Government to give testimony upon the hearing in reference to the value of the property. I am now of the opinion that the amendment should not be allowed. The suit to set aside and vacate the patents on the ground of fraud is inconsistent [903] with a claim for damages on account of such fraud. The one proceeds in disaffirmance of *of* the transaction and the other in affirmance of it. Again a suit to vacate a patent is equitable in its nature while a proceeding to recover damages is legal and the two therefore *cannot joined* in the same suit. If the Government has a cause of action against the defendants or any of them for damages on account of the fraud, it is a legal action and should be brought on the law side of the Court.

It follows from these views that the complainant is entitled to the relief demanded, except as to the patents issued in July, 1902, and decrees will be entered accordingly.

Filed September 12, 1910. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon.

[904]

And afterwards, to wit, on the 27th day of February, 1911, there was duly filed in said court a Notice of Appeal and to Join in Appeal, With Proof of Service, in words and figures as follows, to wit: **[905]**

(Title of Court and Cause.)

Notice of Appeal and to Join in Appeal from Decree.

To Defendant, Alexander Gould, and L. H. Tarpley, His Solicitor and Attorney; and to Defendants, Sidney H. Scanland, Richard F. Malone, John J. Gilliland, Louis Maynard, Richard D. Watkinds, James W. Rozell and to Percy R. Kelly, Their Solicitor and Counsel; and to Defendant, Cornelius N. Tuthill:

You, and each of you, are hereby notified that at the hour of ten o'clock in the forenoon at the courtroom of the above-named Court, in the City of Portland, County of Multnomah, State of Oregon, on the 27th day of February, 1911, the defendants, the Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs, will present to said Court their petition for appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree entered in the above-entitled cause on the 20th day of October, 1910, together with their assignment of errors, and you are invited then and there to appear and unite with the said Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs in said appeal and **[906]** assignment of errors and failing so to do you will be deemed to have acquiesced in said decree, and the said Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick

A. Kribs, will prosecute said appeal without joining you as parties appellant and will name you therein as appellees.

Dated February 13th, 1911.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,

Solicitors and Counsel for Defendants and Appellants, the Linn & Lane Timber Co., Charles A. Smith and Charles J. Swanson.

A. H. TANNER,

Solicitor and Counsel for Defendant and Appellant, Frederick A. Kribs.

Due service of this summons in severance admitted at Albany, Oregon, this 15th day of February, 1911.

SIDNEY H. SCANLAND,
By PERCY R. KELLY,
His Counsel and Attorney.

RICHARD F. MALONE,
By PERCY R. KELLY,
His Attorney and Counsel.

JOHN J. *GLLILAND*,
By PERCY R. KELLY,
His Attorney and Counsel.

LOUIS MAYNARD,
By PERCY R. KELLY,
His Attorney and Counsel.

RICHARD D. WATKINDS,
By PERCY R. KELLY,
His Attorney and Counsel.

JAMES W. ROZELL,
By PERCY R. KELLY,
His Attorney and Counsel.

Due service of this summons in severance admitted at Portland, Oregon, this Feb'y 13, 1911.

ALEXANDER GOULD.
By L. H. TARPLEY,
His Counsel and Attorney.

I hereby admit due service of the within summons in severance this 21 day of February, 1911.

CORNELIUS N. TUTHILL.
L. H. TARPLEY.

Filed February 27, 1911. G. H. Marsh, Clerk.
[907]

And afterwards, to wit, on the 27th day of February, 1911, there was duly filed in said court a Petition of Defendants for Appeal, in words and figures as follows, to wit: **[908]**

(Title of Court and Cause.)

Petition for Appeal.

The above-named defendants, the Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs, conceiving themselves aggrieved by the decree entered in the above-entitled cause on the 20th day of October, 1910, hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and pray that the appeal be allowed and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, and your petitioners pray that said decree may be re-

viewed and reversed.

Dated February 27, 1911.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JOHN M. GEARIN,

Solicitors and Counsel for Defendants and Appellants, the Linn & Lane Timber Co., Charles A. Smith and Charles J. Swanson.

A. H. TANNER,

Solicitor and Counsel for Defendant and Appellant, Frederick A. Kribs.

Filed February 27, 1911. G. H. Marsh, Clerk.

[909]

And afterwards, to wit, on the 27th day of February, 1911, there was duly filed in said court an Assignment of Errors on Appeal of Defendants, in words and figures as follows, to wit: [910]

(Title of Court and Cause.)

Assignment of Errors.

The defendants, the Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs, assert that in rendering the decree entered in the above-entitled cause on the 20th day of October, 1910, the said Circuit Court erred in the following particulars, to wit:

(1) In declaring void, cancelling, annulling and setting aside the nine patents of August 12th, 1902, issued respectively to Alexander Gould, Sydney H. Scanland, Richard F. Malone, John J. Gilliland, Louis Maynard, William J. Lawrence, Richard C.

Watkinds, James W. Rozell and Cornelius N. Tuthill, and described in the decree. This was error because the suit was barred by the Act of Congress of March 3d, 1891 (26 St. L. 1093), the same not having been commenced against the Linn & Lane Timber Company, the owner of the title granted by said nine patents, within six years after the date of said patents, as required by said Act. **[911]**

(2) In declaring the deeds described in the bill conveying the lands granted by said nine patents to be in fraud and violation of, and subject to some right of the complainant and cancelling, annulling and setting aside said deeds and conveyances.

(3) In enjoining and restraining defendant, the Linn & Lane Timber Company, its agents, servants and employees, from asserting, exercising or exerting any authority or control by virtue of the deeds and conveyances described in the bill over the lands for which said nine patents were issued.

(4) In declaring the lands for which said nine patents were issued to be the property of the complainant in fee simple, devested of all right, title or estate in law or equity claimed or asserted by the defendant, the Linn & Lane Timber Company.

(5) In declaring that complainant is entitled to the immediate possession of all the lands for which said nine patents were issued.

(6) In failing to dismiss the bill. This was error because the suit was barred by the Act of Congress of March 3d, 1891 (26 St. L. 1093), the same not having been commenced against the Linn & Lane Timber Company, the owner of the title granted by said nine patents, within six years after the date of said

patents, as required by said Act.

(7) In not dismissing the bill because of failure to prove the conspiracy charged therein against Charles A. Smith, or Charles J. Swanson, or Frederick A. Kribs, or O. Judd Mealey, or William Mealey, or John A. Thompson.

(8) In not dismissing the bill because of complainant's failure to prove that Frederick A. Kribs, when he purchased the lands for which said nine patents were issued had notice of some of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands.

(9) In not dismissing the bill because of complainant's failure **[912]** to prove that Charles A. Smith, when he purchased the lands for which said nine patents were issued, had notice of some of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands.

(10) In not dismissing the bill on the ground that Frederick A. Kribs, for a full and adequate consideration, had purchased the lands for which said nine patents were issued from the persons who had entered and purchased the same from the complainant with no notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands, but in good faith believing said persons could rightfully and lawfully sell and convey said lands and had thereafter, before the commencement of the suit conveyed said lands to Charles A. Smith and Charles J. Swanson, who had thereafter before the commencement of the suit, conveyed said lands to the Linn &

Lane Timber Company.

(11) In not dismissing the bill on the ground that Charles A. Smith, for a full and adequate consideration, had purchased the lands for which said nine patents were issued from Frederick A. Kribs (one-fourth interest being conveyed to Charles J. Swanson and three-fourths to himself) with no notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said land, but in good faith, and that said Smith and Swanson had thereafter before the commencement of the suit conveyed said lands to the Linn & Lane Timber Company.

(12) In not dismissing the bill on the ground that the entries of the lands for which said nine patents were issued had been fully investigated under the direction of complainant's Secretary of the Interior, by officers of his department, with reference to all the alleged conspiracies, frauds and irregularities complained of in the bill in connection with said entries, and that after such investigation, on the evidence adduced, said Secretary had determined and decided **[913]** said entries to be in all respects lawfully made and valid, and had thereupon directed said nine patents to be issued.

(13) In not dismissing the bill as to the land granted by the patent to Alexander Gould instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Alexander Gould to purchase said land under the provisions of the Act of Congress of of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements

of section 2 of said Act.

(14) In not dismissing the bill as to the land granted by the patent to Sydney H. Scanland instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Sydney H. Scanland to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of section 2 of said Act.

(15) In not dismissing the bill as to the land granted by the patent to Richard F. Malone instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Richard F. Malone to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of section 2 of said Act.

(16) In not dismissing the bill as to the land granted by the patent to John J. Gilliland instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said John L. Gilliland to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of section 2 of said Act.

(17) In not dismissing the bill as to the land granted by the patent to Louis Maynard instead of declaring the patent void. This **[914]** was error because the evidence did not show that the duplicate written statement of said Louis Maynard to purchase

said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of section 2 of said Act.

(18) In not dismissing the bill as to the land granted by the patent to William J. Lawrence instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said William J. Lawrence to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of section 2 of said Act.

(19) In not dismissing the bill as to the land granted by the patent to Richard C. Watkinds instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Richard C. Watkinds to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of section 2 of said Act.

(20) In not dismissing the bill as to the land granted by the patent to James W. Rozell instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said James W. Rozell to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of section 2 of said Act.

(21) In not dismissing the bill as to the land granted by the patent to Cornelius N. Tuthill instead

of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Cornelius N. Tuthill to purchase said land under the provisions of the Act of Congress June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of **[915]** section 2 of said Act.

Wherefore, the said Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs pray that said decree be reversed.

Dated Feby. 27, 1911.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,

Solicitors and Counsel for Defendants, the Linn & Lane Timber Company, Charles A. Smith and Charles J. Swanson.

A. H. TANNER,

Solicitor and Counsel for Defendant, Frederick A. Kribs.

Filed February 27, 1911. G. H. Marsh, Clerk. **[916]**

And afterwards, to wit, on Monday, the 27th day of February, 1911, the same being the 126th judicial day of the regular October term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[917]**

(Title of Court and Cause.)

Order Allowing Appeal and Fixing Amount of Bond.

On this 27th day of February, 1911, came the Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs, four of the defendants in the above-entitled cause, and filed herein and presented to this Court their petition for the allowance of an appeal from the decree made and entered in said cause on the 20th day of October, 1910, together with assignment of errors, and praying that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit;

And at the same time said Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs also presented proof of service of written notice on the other defendants in said cause, who have been served with process or have appeared therein, requiring such other defendants to join in said appeal and assignment of errors: **[918]**

And none of the said other defendants so served with said notice having appeared to join in said appeal and assignment of errors;

In consideration whereof this Court does hereby allow the said appeal of said defendants, The Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs, from said decree upon said defendants giving a bond according to law and the rules of the said Circuit Court of Appeals in the sum of Two Thousand ($2000) Dollars,

to answer all costs if they shall fail to sustain their said appeal.

Done in open court, this 27th day of February, 1911.

R. S. BEAN,
Judge.

Filed February 27, 1911. G. H. Marsh, Clerk. **[919]**

And afterwards, to wit, on the 7th day of March, 1911, there was duly filed in said court, a Bond on Appeal of Defendants, in words and figures as follows, to wit: **[920]**

(Title of Court and Cause.)

Bond on Appeal.

Know All Men by These Presents, that we, the Linn & Lane Timber Company and Charles A. Smith, of the City of Minneapolis, in the State of Minnesota, Charles J. Swanson of Fridley, in the State of Minnesota, and Frederick A. Kribs, of the City of Portland, in the State of Oregon, as principals, and C. B. Garrison and ————, of the city of Portland, in the State of Oregon, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Two Thousand ($2000) Dollars, to be paid to the said United States of America, its attorneys or assigns, of which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 7th day of March, A. D. 1911.

Whereas on the 20th day of October, 1910, in a suit in the Circuit Court of the United States for the District of Oregon between **[921]** the United States of America, complainant, and said Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson, Frederick A. Kribs and others, defendants, a decree was rendered against the defendants, and the said Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs having obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree of the aforesaid suit, and a citation directed to the said United States of America is about to be issued citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California:

Now, the condition of the above obligation is such that if the said Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

[Corporate Seal]

LINN AND LANE TIMBER COMPANY.

By A. UELAND,

Its Solicitor and Counsel.

CHARLES A. SMITH. [Seal]

By A. UELAND,

His Solicitor and Counsel.

CHARLES J. SWANSON. [Seal]
By A. UELAND,
His Solicitor.
C. B. GARRISON. [Seal]
FREDERICK A. KRIBS. [Seal]
_____ [Seal]

This bond approved as to form, amount and sufficiency of sureties this 7th of March, 1911.

R. S. BEAN,
Judge.

Filed March 7, 1911. G. H. Marsh, Clerk. **[922]**

And afterwards, to wit, on the 8th day of March, 1911, there was duly filed in said court a Petition of Complainant for Appeal, in words and figures as follows, to wit: **[923]**

(Title of Court and Cause.)

Petition for Appeal.

The United States of America, complainant above named conceiving itself aggrieved by the decree entered in the above-entitled cause on the 20th day of October, 1910, hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that the appeal be allowed, and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner prays that said

decree may be reviewed and reversed.

Dated March 7, 1911.

JOHN McCOURT,

United States Attorney for the District of Oregon and Solicitor for Complainant and Appellant.

[924]

United States of America,
District of Oregon,—ss.

Due service of the within petition for appeal is hereby accepted, and the receipt of a true copy thereof is hereby acknowledged at Portland, Oregon, this —— day of March, A. D. 1911.

LIND, UELAND & JEROME,
DOLPH, MALLORY, SIMON & GEARIN,
Solicitors for Defendants.

Filed March 8, 1911. G. H. Marsh, Clerk. **[925]**

And afterwards, to wit, on the 8th day of March, 1911, there was duly filed in said court an Assignment of Errors on Appeal of complainant, in words and figures as follows, to wit: **[926]**

(Title of Court and Cause.)

Assignment of Errors.

The United States of America, complainant above named, asserts that in rendering the decree entered in the above-entitled cause on the 20th day of October, 1910, the said Circuit Court erred in the following particulars, to wit:

FIRST: In dismissing the bill of complaint herein as to the eight patents bearing date of July

9, 1902, and each of them, and the lands described therein, issued respectively to O. Judd Mealy, John A. Thompson, William W. Billings, Charles Wiley, Samuel D. Pickens, John T. Parker, Joseph O. Mickalson, and Joseph Steingrandt, and described in the decree.

This was error because the evidence in the case established the conspiracies, frauds, irregularities, and notice thereon complained of in the bill of complaint in connection with the entries of said lands to the satisfaction of the court, and said suit was commenced as to **[927]** all of said defendants and as to said patents within the time required by law.

SECOND: In dismissing the bill of complaint as to the said eight patents of July 9, 1902, and the land described therein mentioned in the decree, instead of rendering and entering a decree as to said patents and each of them, and said lands described therein as prayed for by complainant, the conspiracies, frauds, irregularities, and notice thereof set forth in the bill of complaint having been clearly and fully established to the satisfaction of the court.

THIRD: In holding and deciding that the running of the statute of limitations was not stopped as to the defendants C. A. Smith and Charles J. Swenson by filing the bill of complaint, and the issuance of subpoenas ad respondendum placed in the hands of the United States Marshal, within the statute, for service upon the defendants, followed promptly by issuance and service of a warning order upon said defendants as soon as it was and could be ascertained that the said Marshal by the exercise of diligence

could not serve said defendants within the District of Oregon.

This was error because the bill of complaint herein did not disclose the place of residence of the defendants C. A. Smith and Charles J. Swenson, and complainant was informed and believed that the said C. A. Smith, who was and is the actual owner of all said lands, was in the District of Oregon at the time of the commencement of the suit and while the Marshal was endeavoring to secure service upon him.

FOURTH: In holding and deciding that this suit, as to the said eight patents of July 9, 1902, and the land described therein, was not commenced within the time prescribed by law. **[928]**

This was error because the frauds, conspiracies, and irregularities complained of as to the entries of said lands were actively concealed from complainant by defendants until January, 1905, and complainant could not have discovered the same by the exercise of ordinary diligence and prudence prior to the latter date, and said suit was commenced within three years and five months after the discovery of said frauds, conspiracies and irregularities.

FIFTH: In failing and refusing to make and enter a decree herein in accordance with the prayer of complainant's bill of complaint, as to said eight patents of July 9, 1902, and the land described therein issued respectively to O. Judd Mealy, John A. Thompson, William W. Billings, Charles Wiley, Samuel D. Pickens, John T. Parker, Joseph O. Mickalson, and Joseph H. Steingrandt.

Wherefore, the United States of America, complainant, prays that the said decree be reversed, and

that the above-entitled court may be directed to enter a decree herein in accordance with the prayers of plaintiff's bill of complaint.

JOHN McCOURT,

Solicitor for Complainant and United States Attorney for the District of Oregon.

United States of America,
District of Oregon,—ss.

Due service of the within assignment of errors is hereby accepted, and the receipt of a true copy thereof is hereby acknowledged at Portland, Oregon, this 7th day of March, A. D. 1911.

LIND, UELAND & JEROME,
DOLPH, MALLORY, SIMON & GEARIN,
Solicitors for Defendants.

Filed March 8, 1911. G. H. Marsh, Clerk. **[929]**

And afterwards, to wit, on Saturday, the 11th day of March, 1911, the same being the 137th judicial day of the regular October, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[929½]**

(Title of Court and Cause.)

Order Allowing Appeal.

Now, on this day, came the United States of America, complainant herein, by its counsel, John McCourt, United States Attorney for the District of Oregon, and presented its petition for an appeal (cross-appeal) and an assignment of errors accom-

panied the same, which petition, upon consideration of the Court is hereby allowed, and the Court hereby allows an appeal (cross-appeal) to the United States Court of Appeals for the Ninth Circuit.

Dated at Portland, Oregon, this 11th day of March, A. D. 1911.

R. S. BEAN,
Judge.

Filed March 11, 1911. G. H. Marsh, Clerk. **[930]**

And afterwards, to wit, on the 28th day of March, 1911, there was duly filed in said court, a Stipulation as to Transcript on Appeal, in words and figures as follows, to wit: **[931]**

(Title of Court and Cause.)

Stipulation as to Making Up of Record.

It is hereby stipulated between the plaintiff by the United States Attorney for the District of Oregon, and defendants the Linn and Lane Timber Company, Charles A. Smith, Charles J. Swenson and Frederick A. Kribs, by their solicitors and counsel, that the transcript of the record on the appeals of said plaintiff and defendants from the decree in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, shall be made up of the following papers, it being hereby agreed that the same constitute all the records, proofs, entries and papers **[932]** on file in said cause necessary on the hearing of said appeals, to wit:

The original bill, the praecipe for process thereon against C. A. Smith and Charles J. Swenson, if any;

the subpoena ad respondendum issued thereon, and the return as to service thereof on said Smith and Swenson; the order dismissing the bill as to Fred Wodtli; the motion and affidavit for a warning order against said C. A. Smith et al., filed July 20, 1908; the warning order issued thereon on July 27th, 1908, and the return of service thereof on said Smith and Swenson; the praecipes of appearance for said Smith, Swenson and Kribs; the plea of F. A. Kribs et al to said original bill; the order of October 5, 1908, allowing plaintiff 15 days in which to file amended bill; the plea of said Smith and Swenson to the original bill; the orders respectively of October 19th, October 29th and November 5th, 1908, further extending time to file amended bill; the amended bill; the order of November 16th, 1908, directing issuance of subpoena ad respondendum to the Linn and Lane Timber Company; the subpoena ad respondendum to said company, issued pursuant to said order, and the return of service thereof; the praecipe of appearance for said company; the order of December 2, 1908, extending the time to plead to the amended bill; the answer of Charles A. Smith et al. to the amended bill; the answer of Linn and Lane Timber Company to the amended bill; the replication to the answer of said Charles A. Smith et al.; the replication to the answer of Linn and Lane Timber Company; the order of February 18, 1910, setting case for final hearing; the order of April 18, 1910, on the motion to amend the bill; **[933]** the objections of Linn and Lane Timber Company et al. to said motion; the affidavit of John McCourt filed April 18, 1910, in sup-

port of said motion; the order of April 19, 1910, granting said motion; the amendment to the bill, filed April 22, 1910; the answer of Linn and Lane Timber Company et al. to said amendment; the order of May 3, 1910, appointing Geo. F. Hitchcock, Jr., Special Examiner; the order of May 5, 1910, limiting the time to take evidence, and the amendments to the bill, filed respectively July 27th and August 6th, 1910.

Also the evidence adduced orally in open court and all the proceedings had in open court, the same having been taken in writing by the court stenographer and filed in said cause, except the testimony of Gus A. Lovegren, J. A. Buckley, Charles B. Garrison, B. Gildner, Finlay Morrison and Charles W. Embody, and except the testimony of Horace G. McKinley as a witness for defendants (all said testimony relating wholly to the value of the land described in the bill).

Also the following documentary evidence adduced in open court and filed in said cause, to wit:

Affidavit of W. W. Billings in Government Exhibit 4.

Affidavit of J. J. Gilliland in Government Exhibit 5.

Affidavit of W. J. Lawrence in Government Exhibit 6.

Affidavit of Louis Maynard in Government Exhibit 8.

Affidavit of J. O. Mickalson in Government Exhibit 9.

Affidavit of J. T. Parker in Government Exhibit 10.

Affidavit of S. D. Pickens in Government Exhibit 11.

Affidavit of J. W. Rozell in Government Exhibit 12.

[934]

Affidavit of Sidney H. Scanland, in Government Exhibit 13.

Affidavit of J. H. Steingrandt in Government Exhibit 14.

Affidavit of C. N. Tuthill in Government Exhibit 15.

Affidavit of R. D. Watkinds in Government Exhibit 16.

Affidavit of Charles Wiley in Government Exhibit 17.

Affidavit of J. A. Thompson in Government Exhibit 18.

Affidavit of O. Judd Mealey in Government Exhibit 19.

~~Affidavit of Alexander Gould in Government Exhibit 20.~~

Government Exhibits 1, 2, 3, 7, 56 to 58, inclusive, 59 (which is the same as 46), 61 (which is the same as 45), 65, 66, 74 to 82, inclusive, and Defendant's Exhibits "B" and "C." U. S. Exhibits 162 to 168 inclusive, Gov. Ex. 26.

Also the depositions taken and returned by George F. Hitchcock, Jr., as Special Examiner, and the exhibits returned and filed with the same, to wit, Defendant's Exhibits "C," "D," "M," "N," "O," and "P."

Also the opinion of the Court, the decree, the notice to certain defendants to join in the appeal and the proof of service thereof, the petition of Linn and Lane Timber Company, Charles A. Smith, Charles J. Swenson and Frederick A. Kribs, for appeal, their assignment of errors, the order allowing their appeal, their bond on appeal and approval thereof, the original citation on said appeal and proof of service thereof, the petition for appeal of the plaintiff, the

assignment of errors by plaintiff, the order **[935]** allowing plaintiff's appeal, the original citation on plaintiff's appeal and proof of service thereof.

Dated at Portland, Oregon, March 27th, 1911.

(Signed) JOHN McCOURT,
United States Attorney for the District of Oregon.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
Solicitors and Counsel for Linn and Lane Timber Company, Charles A. Smith and Charles J. Swenson.

ALBERT H. TANNER,
Solicitor and Counsel for Frederick A. Kribs.

Filed March 28, 1911. G. H. Marsh, Clerk. **[936]**

And afterwards, to wit, on the 3d day of April, 1911, there was duly filed in said court a Stipulation, in words and figures as follows, to wit: **[937]**

(Title of Court and Cause.)

Stipulation [Re Government's Exhibits No. 21–25, and 27–42, etc.]

It is hereby stipulated by and between the parties that Government's Exhibits 21 to 25, inclusive, and 27 to 42, inclusive, being deeds and mortgages, may be omitted from the transcript herein.

It is further hereby stipulated and agreed that said deeds and mortgages affect the land of the grantors named therein and described in the bill of complaint as having been entered and applied for by said grantors respectively, and that the dates upon

which said deeds and mortgages purport to have been executed, and the grantees therein, are as follows: **[938]**

Applicant.	Mtg. to Kribs.	Ex.	Deed to Kribs.	Ex.
William W. Billings	Aug. 27, 1900	21	Sep. 1, 1900	22
Jno. T. Parker			Aug. 27, 1900	23
Wm. J. Lawrence		24	Oct. 15, 1900	25
Corn. N. Tuthill			Oct. 9, 1900	27
Jos. Steingrandt	Aug. 27, 1900	29	Sept. 1, 1900	28
Rich. F. Malone		30	Oct. 12, 1900	31
Sam'l. D. Pickens	Aug. 27, 1900	32	Sep. 1, 1900	33
Syd. H. Scanland			Oct. 10, 1900	34
Jno. J. Gilliland			Oct. 11, 1900	35
Alex. Gould			Oct. 11, 1900	36
Louis P. Maynard			Oct. 11, 1900	37
Jas. W. Rozell			Oct. 9, 1900	38
Jos. O. Mikalson	Aug. 27, 1900	41	Aug. 28, 1900	39
R. C. Watkins			Oct. 18, 1900	40
Chas. Wiley			Aug. 27, 1900	42

It is further stipulated and agreed by and between the parties hereto that the Court may on appeal refer to and consider the matters contained in this stipulation relating to the exhibits mentioned herein as though said exhibits were transcribed at length into the record of this case.

JOHN McCOURT,
United States Attorney for the District of Oregon.

A. E. *EU*LAND,
JOHN LIND,
J. M. GEARIN,
A. H. TANNER,
Solicitors and Counsel for Defendants Linn and Lane Timber Company and C. A. Smith. **[939]**

[Certificate of Clerk Re Issuance of Subpoena ad Respondendum.]

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, do hereby certify that no praecipe for the issuance of Subpoena ad Respondendum was filed by the United States Attorney for the District of Oregon upon the filing the Original Bill of Complaint in this cause, but that process of Subpoena was issued in accordance with Rule 12 of the Rules in Equity prescribed by the Supreme Court of the United States upon the oral request of the United States Attorney.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 3d day of April, 1911.

[Seal] G. H. MARSH,
Clerk. **[940]**

[Certificate of Clerk U. S. Circuit Court to Record.]

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, pursuant to the foregoing order allowing the appeal of Linn and Lane Timber Company, Charles A. Smith, Charles J. Swenson, and Frederick A. Kribs, and the foregoing order allowing the appeal of the United States of America from the decree of said Court in

the case of the United States of America, complainant, against said Charles A. Smith and others, defendants, do hereby certify that the foregoing pages, numbered from seven to 940, inclusive, contain a true and complete transcript of the record directed by law to be made and of the proofs, entries and papers on file in said cause described or referred to in the foregoing stipulation between the parties to said appeals as to making up the said transcript of record, as the same appear of record and on file at my office and in my custody, except that the same does not contain a copy of what is referred to in said stipulation as praecipe for process on the orignial bill, for the reason that no such praecipe was filed. I further certify that I have annexed to the foregoing transcript the original citation issued upon the appeal of said Linn and Lane Timber Company, and others, and the original citation issued upon the appeal of the United States of America.

And I further certify that the cost of the foregoing transcript is Six hundred fifty-four 50/100 dollars, and that one-half of said cost has been paid by the said appellants, Linn and Lane Timber Company, et al., and that one-half of said cost has been charged against the appellant, The United States of America.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this 3d day of April, A. D. 1911.

[Seal] G. H. MARSH,
Clerk. **[941]**

[Endorsed]: No. 1972. United States Circuit Court of Appeals for the Ninth Circuit. The Linn & Lane Timber Company, Charles A. Smith, Charles J. Swenson and Frederick A. Kribs, Appellants, vs. The United States of America, Appellee, and The United States of America, Appellant, vs. C. A. Smith, Frederick A. Kribs, Charles J. Swenson, O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkinds, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees. Transcript of Record. Appeals from the United States Circuit Court for the District of Oregon.

Filed April 5, 1911.

F. D. MONCKTON,
Clerk.

[Endorsed:] Printed Transcript of Record. Filed June 27, 1911. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

and

THE UNITED STATES OF AMERICA, Appellant,
vs.
C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mikalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

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No. 1972.

THE LINN & LANE TIMBER COMPANY et al., Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

and

THE UNITED STATES OF AMERICA, Appellant,
vs.
C. A. SMITH et al., Appellees.

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At a Stated Term, to-wit, the October Term, A. D. 1911, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-Room Thereof, in the City and County of San Francisco, in the State of California, on Monday, the Thirtieth Day of October, in the Year of Our Lord One Thousand Nine Hundred and Eleven.

Present:

Honorable William B. Gilbert, Circuit Judge.
Honorable Erskine M. Ross, Circuit Judge.
Honorable William W. Morrow, Circuit Judge.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mikalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Order of Submission.

Ordered, appeals in the above-entitled cause argued by Mr. John Lind, counsel for the appellants, and by Mr. United States Attorney John McCourt, counsel for the appellee, and submitted to the Court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees,

and

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

[*Opinion U. S. Circuit Court of Appeals.*]

Upon Appeal from the United States Circuit Court for the District of Oregon.

Before Gilbert, Ross, and Morrow, Circuit Judges.

These suits were brought by the Government to obtain decrees annulling patents theretofore issued for certain lands entered under the act of Congress known as the Timber and Stone Act (20 St. Lg. 89).

Case Numbered 1972 involved seventeen patents, each covering a quarter-section of land situated in Linn County, Oregon. Eight of those patents were issued July 9th, 1902, and nine of them August 12th, 1902.

Case numbered 1973 involved twenty-eight patents, each covering a quarter-section of land in the same county and state, all of which patents were issued August 12th, 1902.

The suits were commenced in the court below on May 25th, 1908.

For the lands covered by the patents involved in case 1973 the

filings were made in January and February, 1900, and final proofs were made in April and May of the same year, all of the land covered thereby being at the time of, or within a few days after, the making of final proof conveyed by the applicants to one Willd in trust for the defendant C. A. Smith. Willd thereafter, and on November 2, 1900, conveyed the same land to one Greacen, who on February 11th, 1901, conveyed it to one Rogers, who, on December 21st, 1904, conveyed it to one Werner—all in trust for the defendant Smith, and all of which deeds were at the time of their execution placed of record, the legal title to the land standing in the name of Werner from the time of the conveyance of it to him until subsequently conveyed by him to the defendant Linn & Lane Timber Company, as hereinafter stated.

The entries involved in case 1972 were made in May, June, and July, 1900, and final proof was made in August and October of that year, about which time the land covered by them was conveyed by the several applicants to the defendant Kribs in trust for the defendant Smith—an undivided three-fourths of which Kribs, on the 24th of October, 1904, conveyed to Smith, and on December 28th of the same year conveyed the other undivided one-fourth to one Swenson in trust for Smith—all of which deeds were at the time of their execution filed for record. Subsequently those lands were also conveyed to the Linn & Lane Timber Company as hereinafter stated.

The defendant Smith, who was a manufacturer of lumber at Minneapolis, Minnesota, had previously acquired about 52,000 acres of other timber lands in Linn, Lane, and Douglas Counties of the State of Oregon. In May, 1906, he caused to be organized under the laws of the State of Minnesota the defendant corporation called Linn & Lane Timber Company, with a capital stock of one hundred thousand dollars, divided into one thousand shares of the par value of one hundred dollars each, for the purpose of taking and holding the title to the lands involved in these suits as well as the 52,000 acres theretofore acquired by him. Nine hundred and ninety-eight shares of the stock of the corporation were subscribed by Smith, and one share each by his wife and his attorney. The corporation was organized by the election of Smith as President, Johanna Smith, his wife, as vice-president, Vernon Smith, his son, as secretary, and Nan A. Smith, his daughter, as treasurer. Thereafter, and on June 4th, 1906, Smith tendered to the directors of the corporation, consisting of himself, his son, and his wife, a deed executed by himself and wife, covering all of his lands in the counties mentioned, in payment for the stock of the corporation, which deed was accepted by the directors; and on May 28th, and August 15th, 1907, respectively, Swenson and Werner, at Smith's request, conveyed the interests held by them to the same corporation, all of which deeds to the corporation were retained by Smith and not filed for record in the proper county until September 9th, 1908, more than six years after the issuance of the patents involved in the present cases.

To the original bill in case 1972, C. A. Smith, Frederick A. Kribs, Charles J. Swenson, and various other individuals were made defendants, and in case 1973 Smith, Kribs, Werner, and various

other individuals were made parties defendant. Both bills charged that all of the entries were made in pursuance of a conspiracy, specifically set out, to defraud the Government of the title to the lands covered thereby, and that Smith acquired the title to the lands involved with notice of such fraud. Subpœnas ad respondendum were issued upon the filing of the bills and placed in the hands of the Marshal for service, and were in due time served upon the resident defendants. Smith, Swenson and Werner were non-residents of the state of Oregon, and in July following the filing of the bills the Marshal returned the subpœnas without service upon them. On the 27th of that month, upon the application of the United States Attorney, a warning was issued to them, which was subsequently served. In September and October, 1908, Smith, Kribs and Werner filed pleas in abatement, alleging that the property in question had been conveyed to and was owned by the Linn & Lane Timber Company prior to the commencement of the suits, and that it was therefore an indispensable party. On November 16th, 1908, the complainant filed an amended bill in each suit, making that company a party defendant, and subpœna was thereupon issued and placed in the hands of the Marshal for service upon its resident agent, and service duly made. The amended bills contained substantially the same allegations as the original bills, and the additional allegation that the Linn & Lane Timber Company was organized by C. A. Smith to consummate the fraudulent acquisition of title to the lands in question; that the deed from himself to the company was not in fact made until after the commencement of the suits, but was fraudulently ante-dated, and that all of the deeds were concealed and kept from record in pursuance of such fraudulent purpose. To the bills as amended answers were filed denying all of the averments of fraud and setting up as affirmative defenses that Smith and the Linn & Lane Timber Company were purchasers of the property in good faith and without notice of any fraud; that the decision of the Secretary of the Interior directing that the applications for the lands pass to patent is conclusive on the Government, and that the suits are barred by the Statute of Limitations because not commenced against the Linn & Lane Timber Company within six years from the date of the patents; replications were filed in due time and upon the issues joined the evidence was taken before the court below, upon which the judgments appealed from were given.

GILBERT, *Circuit Judge* (after stating the case):

A careful consideration of the record satisfies us that the learned judge of the court below was quite right in finding that all of the entries in question were fraudulent, and the proof in support of them false and fraudulent, and in holding that the defendant C. A. Smith, if not actually cognizant of the conspiracy in pursuance of which the entries and proofs were made, was at least bound by the acts of his agent, Kribs, who, according to the evidence, was an active participant in the frauds upon the Government. Smith, therefore, cannot be regarded as an innocent purchaser. He acquired, directly and through trustees, the title to all of the lands covered by the pat-

cents issued pursuant to the entries and proofs referred to, and afterwards, as the records show, conveyed and caused to be conveyed such title to the Linn & Lane Timber Company, a Minnesota corporation, which he caused to be formed, himself subscribing for all of its capital stock with the exception of two shares, one of which was issued to his wife, and one to his attorney. That the legal title to all of the lands passed to the Linn & Lane Timber Company by virtue of the deeds executed to it is undisputed, and that that company was not made a party to the suits until more than six years after the issuance of the patents is also shown by the records. The important question in the cases, therefore, is whether the company's plea of the statute of limitations should be sustained. The court below sustained it in respect to the lands covered by the eight patents which were issued July 9th, 1902, on the ground that six years had run before the suit could be considered as having been commenced against C. A. Smith, but not so with respect to the other patents involved. Treating Smith as the corporation, and the corporation as Smith, the court held that as respects all the patents that were issued within six years of the commencement of suit against Smith the plea of the statute was unavailing, saying, in its opinion:

"As a general rule the holder of the legal title is an indispensable party to a suit to set aside a patent (U. S. v. Winona & St. P. R., 67 Fed. 948; U. S. v. C. P. R. R., 11 Fed. 449), and the statute of limitations does not cease to run in his favor until he is made a party to the suit, and process issued and placed in the hands of the Marshal with a bona fide intent that it shall be served. Miller v. McIntyre, 6 Pet. 60. But the identity of Smith and the Linn & Lane Timber Company, and their relation to the title to the property in controversy, is such that I do not think the rule should be applied in this case. Smith is the real party in interest and the beneficial owner of the property. The corporation was organized by him as a mere holding concern. He owned all of its capital stock. He and the members of his family composed its board of directors, and were the officers of the corporation. In fact, Smith was the corporation, and the corporation was Smith. The question of the statute of limitations should be therefore determined by the time the suit was commenced against Smith and the holders of the record title, and not against the mere holding corporation."

The learned judge subsequently added, in his opinion: "I am aware that the soundness of this conclusion is not free from doubt, but I believe it to be in accordance with equity, justice, and sound reason."

By its act of March 3, 1891 (26 St. Lg. 1093), Congress declared:

"That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents."

The testimony is that at the first meeting of the Board of Directors of the Linn & Lane Timber Company Smith laid before the board deeds to the company of certain timber lands in the State of

Oregon executed by himself and wife and the proposition to deliver the same to the company and thereby vest title to the lands therein described in the company and accept as a full consideration for the same the entire authorized capital stock of the company fully paid up and non-assessable, but no minutes or other testimony are offered to show that that proposition was accepted or that the deeds were delivered. The evidence is that the possession of the deeds never passed to the secretary of the corporation, who was Smith's son, a boy of seventeen years of age, nor to any other officer of the corporation, and Trabert who was the secretary of the C. A. Smith Lumber Company, another of Smith's corporations, testified that from the time of their execution to the time of the first meeting of the Linn & Lane Timber Company the deeds were in his possession and that from and after that meeting they were kept by him in an envelope together with the articles of incorporation in the office of the C. A. Smith Lumber Company up to the time when they were recorded. He testified as to the reasons why he did not record the deeds, and Smith testified that one reason why he did not "want to record the deeds" was because he did not care to have newspaper notoriety. But, assuming that the deeds were in fact delivered to the corporation at the time of its first meeting of its board, it is clear that it should be held for the purpose of determining the question of the application of the statute of limitations that Smith was the corporation and the corporation was Smith. He organized the corporation. He owned all of the capital stock; he owned all of the lands. Before the corporation was organized and before the patents issued, he knew that the officers of the government were making investigation of the entries, and that there was talk of his indictment by a Federal Grand Jury. The corporation was organized in Minnesota "as a holding company" of lands in Oregon. Up to the time when the deeds were recorded, September 9, 1908, the corporation had never done any business, had never taken possession of the lands or exercised any act of ownership thereof, and there was nothing of record in any state or county office in Oregon to indicate that the corporation possessed any property in the state or had ever transacted any business therein. There can be no doubt that one at least of the purposes for which it was formed was to conceal fraudulently therein the titles to the lands which are the subject of this suit, and to keep the titles so concealed until the time when the Statute of Limitations should bar the anticipated suit of the government to set aside the patents. This is shown by the fact that the possession of the deeds which apparently were executed on June 4, 1906, May 28, 1907, and August 17, 1907, was retained by Smith, and that he withheld the deeds from record until three and a half months after the commencement of the suit, and by the further fact that up to the date of recording the deeds the taxes on the lands were assessed against and were paid by the grantors and not by the grantee, the corporation. "The fact that a deed is withheld from record or is otherwise concealed is a badge of fraud." 20 Cyc. 146, and cases there cited. In M'Alpine v. Hedges, 21 Fed. 689, it was said: "When a fraud is of a secret

nature, and in the particular case has been conceived and executed upon such a plan as to secure continued secrecy, without further acts of concealment except silence, the statute ought not to run until there has been a discovery. In such a case it may well be said to have been a continuous concealment. The making of a fraudulent deed, and the keeping of it off the record by all the persons concerned in and cognizant of the transaction, combined with their purposed silence upon the subject, it certainly will not do to say is not a concealment, for which relief may be granted." In McCaskill Co. v. United States, 216 U. S. 504, the court said: "A growing tendency is therefore exhibited in the courts to look beyond the corporate form to the purpose of it, and to the officers who are identified with that purpose," citing Cook on Corporations, Sections 663, 664, in which it is said: "The disabilities of the corporation are not disabilities of the stockholders, nor are the disabilities of the stockholders the disabilities of the corporation. Hence it is that a corporation is often organized to act as a cloak for fraud. Such cases as these are becoming common and the courts are becoming more and more inclined to ignore the corporate existence when necessary in order to circumvent fraud." In re Rieger, etc., 157 Fed. 609, the court said: "The doctrine of corporate entity is not so sacred that a court of equity, looking through forms to the substance of things, may not in a proper case ignore it to preserve the rights of innocent parties or to circumvent fraud." In United States v. Milwaukee Refrigerator Transit Co., 142 Fed. 247, in which it was alleged that the corporation defendant was a dummy organized, owned and operated by the stockholders of a brewing company as a device to cover the receipt of rebates on interstate shipments of beer, the court said: "If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." In First National Bank v. F. C. Trebein Co., 59 Ohio St. 316, the court said: "The fiction by which an ideal legal entity is attributed to a duly-formed incorporated company, existing separate and apart from the individuals composing it, is of such general utility and application as frequently to induce the belief that it must be universal, and be in all cases adhered to, although the greatest frauds may thereby be perpetrated under the fiction as a shield. But modern cases, sustained by the best text-writers, confine the fiction to the purposes for which it was adopted,—convenience in the transaction of business and in suing and being sued in its corporate name, and the continuance of its rights and liabilities, unaffected by changes in its corporate members,—and have repudiated it in all cases where it has been insisted on as a protection to fraud or any other illegal transaction." And in State v. Standard Oil Co., 49 Ohio St. 137, the same court said: "On a question of this kind, the fact must constantly be kept in view that the metaphysical entity has no thought or will of its

own; that every act ascribed to it emanates from and is the act of the individuals personated by it; and that it can no more do or act, or refrain from doing it, contrary to the will of these natural persons than a house can be said to act independently of the will of its owner; and, where an act is ascribed to it, it must be understood to be the act of the persons associated as a corporation, and, whether done in their capacity as corporators or as individuals must be determined by the nature and tendency of the acts."

If in any conceivable case a court of equity should look through the form to the substance, it should do so in a case like this. The corporation is Smith. It is Smith seeking shelter behind articles of incorporation and invoking the legal fiction of a corporate entity for his protection in the perpetration of a fraud. Said Lord Mansfield in Johnson v. Smith, 2 Burr. 962: "The court would not endure that a mere form or fiction of law, introduced for the sake of justice, should work a wrong contrary to the real truth and substance of the thing." Says Morawetz in his work on corporations, sec. 227: "The statement that a corporation is an artificial person or entity, apart from its members, is merely a description in figurative language, of a corporation viewed as a collective body. A corporation is really an association of persons, and no judicial dictum or legislative enactment can alter this fact."

In addition to the foregoing, we think there is other ground on which the judgment of the court below may be sustained. The decision in United States v. Winona, etc., R. R. 165 U. S. 463, should not be taken as deciding that no fraud committed by the owner of patented land after the issuance of patent can toll the statute of limitations. No such question was involved in that case, and indeed no question at all of the application of the statute of limitations, and we submit that it was not the intention to overrule Bailey v. Glover, 21 Wall. 342. In that case the statute of limitations was as absolute as that which is invoked in the present case. It was Section 5057 of the Revised Statutes, providing: "No suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy, and a person claiming an adverse interest, touching any property or rights of property transferable to or vested in such assignee, unless brought within two years from the time when the cause of action accrued for or against such assignee." Glover fraudulently intending to take advantage of the bankruptcy law secretly conveyed property to members of his family. The assignee in bankruptcy, more than three years after his appointment, having ascertained the facts, brought a suit to set aside the conveyances. The court held that the bar did not commence to run until the fraud was discovered. Mr. Justice Miller, for the Court, said: "We also think that in suits in equity the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the

knowledge of the other party." Speaking of the principles of the statutes of limitations, the learned justice said: "They were enacted to prevent frauds; to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which should show that such rights never existed, or had been satisfied, transferred, or extinguished, if they ever did exist. To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure." The doctrine of that case has been reaffirmed in numerous subsequent decisions. In Rosenthal v. Walker, 111 U. S. 185, the court said: "The case of Bailey v. Glover has often been cited by the court but has never been doubted or qualified." No distinction between the statute of limitations involved in that case and that which is involved in the present case is to be found in the fact that in the former the time is limited from the date when the "cause of action accrued." In Gifford v. Helms, 98 U. S. 248, construing that statute, the court said that the cause of action accrued on the appointment of the assignee or trustee in bankruptcy.

What was said by this court in United States v. American Lumber Company, 85 Fed. 827, was in answer to the contention that the statute of limitations should be liberally construed in favor of the government so as to hold its effort to commence the action equivalent to a commencement thereof within the time limited by the statute. There was in the case no question of fraud or of a fraudulent concealment of a conveyance.

It is suggested that the fraudulent transaction should be upheld in this case for the reason that a small portion of the stock of the corporation has been purchased by an innocent third party and that a portion of the stock has been pledged as security for a loan. But it has never been held that a corporation which is not itself an innocent purchaser of property can defend a suit to recover the property on the ground that its stockholders subscribed to or purchased their stock in good faith and in ignorance of fraud. The contrary has been held by this court in Wilson Coal Co. v. United States, 188 Fed. 545. In Cawthra v. Stewart, 109 N. Y. Sup. 770, it was held that one induced by the fraud of the president of the corporation who owns and controls its entire stock to subscribe for stock may sue the corporation for a rescission of the contract and for the recovery of the amount paid for the stock. In that case Stewart, who owned 98 shares of stock of the corporation and controlled the remaining two shares, and was its president, made fraudulent representations to a third person, and the corporation accepted and retained the proceeds of the fraud with knowledge thereof. It was held that the corporation could not avoid liability on the ground that it did not know of the fraudulent representations until after they had been made, and that it did not authorize the making of them. The court said: "It is urged in behalf of the demurrant that it is not a party to the contract in suit, that the

defendant Stewart was not its agent, and that it had no part in the fraud; in other words, that the defendant Stewart is one person, and that the defendant corporation is an entirely separate, distinct and definite legal entity, and is not bound by or liable for any acts or omissions of the former which it has not authorized * * * We do not have a case of agency, but of identity. It cannot properly be said that the corporation could clothe Stewart with authority any more than that Stewart could clothe himself with authority. He was the corporation, and it was only another form of him."

The decree is affirmed.

[Endorsed:] Opinion. U. S. Circuit Court of Appeals. Filed May 20, 1912. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

J. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Appeals from the Circuit Court of the United States for the District of Oregon.

Decree U. S. Circuit Court of Appeals.

This cause came on to be heard on the Transcript of the Record from the Circuit Court of the United States for the District of Oregon, and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that (*) [the decree of the said Circuit Court in this cause be, and hereby is affirmed] [†] this cause be, and hereby is

(*Amendment made pursuant to order entered February 24, 1913.)

[†Words enclosed in brackets erased in copy.]

remanded to the District Court of the United States for the District of Oregon with directions to so modify the decree filed on the 20th day of October, A. D. 1910 as to direct the cancellation and annulment of the eight patents issued July 9, 1902, and involved in the appeal of the United States of America, and to grant to the United States of America relief as to said eight patents, to the same extent and effect as to the other nine patents involved in this suit, and that, as so modified, the said decree be, and hereby is affirmed.

[Endorsed:] Decree, U. S. Circuit Court of Appeals (As amended pursuant to order entered February 24, 1913.) (Approved by Gilbert, C. J.) Filed and Entered May 20, 1912. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. Amended pursuant to order entered February 24, 1913. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD MEALEY, WILL MEALEY, J. A. THOMPSON, GEORGE F. MEALEY, RICHARD F. MALONE, WILLIAM J. LAWRENCE, ALEXANDER GOULD, JOHN J. GILLILAND, LOUIS MAYNARD, JOSEPH O. MICKALSON, JAMES W. ROZELL, JOHN THOMAS PARKER, SAMUEL D. PICKENS, SIDNEY H. SCANLAND, JOSEPH H. STEINGRANDT, CORNELIUS N. TUTHILL, RICHARD D. WATKINS, CHARLES WILEY, WILLIAM W. BILLINGS, and LINN & LANE TIMBER COMPANY, Appellees.

Motion for Modification of Order and Decree.

Comes now the United States of America by John McCourt, United States Attorney for the District of Oregon, and moves this Honorable Court for an order amending its order and decree made and entered in the above mentioned suit and upon the above entitled appeals therein, on the 20th day of May, 1912, that is to say:

That the said order and decree herein be modified and amended so as to order and direct the cancellation and annulment of the eight patents issued July 9, 1902, and involved in the appeal of the United States of America herein, and granting to the United States of America, relief as to said eight patents, to the same extent and effect as to the other nine patents involved in this suit.

This motion is based upon the opinion of the Court rendered

herein on the 20th day of May, 1912, and particularly that portion thereof which approves the principles announced in the case of Bailey vs. Glover, 21 Wallace, 342, relating to statutes of limitation, and applies the same to this case and the statute of limitations involved herein. This motion will be called up for hearing on Monday, July 1, 1912, or at such other time as this Honorable Court may designate for hearing thereon.

This Honorable Court in its opinion herein, fully adopts and approves the following language of Mr. Justice Miller in the case of Bailey vs. Glover:

"We also think that in suits in equity, the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the perty committing the fraud, to conceal it from the knowledge of the other party."

In approving and following the case of Bailey vs. Glover, the Court in its opinion in this case, said:

"The Court held that the bar might not commence to run until the fraud was discovered."

and that

"the doctrine of that case has been re-affirmed in numerous subsequent decisions."

And further,

"No distinction between the statutes of limitations involved in that case and that which is involved in the present case, is to be found in the fact that in the former the time is limited from the date when the cause of 'action accrued'."

The decision of the Court hereinabove referred to, as your petitioner views it, rendered it unnecessary for the Court to directly pass upon the question treated at length in briefs upon this appeal, of whether or not this suit was commenced as to the defendants C. A. Smith and Charles J. Swenson on May 25, 1908, the date the bill was filed, or on July 27, 1908, the date upon which an order of substituted service was secured.

The eight patents involved in the Government's appeal are sued for in the same bill as the nine patents the Court directs cancelled herein. Service upon the Linn & Lane Timber Company was had as to all seventeen patents at the same time. The Linn & Lane Timber Company obtained its pretended title to all seventeen claims by a conveyance containing a description of the entire seventeen claims. This conveyance was concealed and kept from the record in the same manner and for the same length of time as to all of the seventeen claims. Clearly then, so far as the Linn & Lane Timber Company is concerned, if the statute of limitations did not run until the fraud was discovered as to the nine cancelled claims, it did not and could not run as to the eight claims involved in the Government's appeal. If concealment of the fraud prevented the statute of limitations from running as to the nine cancelled claims, in like

manner it prevented its running as to the eight claims involved in the Government's appeal. If it be assumed that the suit was not commenced as to C. A. Smith and Charles J. Swenson until July 27, 1908, the result must be just the same. The Government however, does not understand that the Court so holds in its opinion in this case, but assumes that the Court considered it unnecessary to decide the question in view of its holding that the statute of limitations does not commence to run until discovery of fraud, where the fraud is concealed or is of a character to conceal itself.

Smith and Swenson claim that at the time this suit was commenced, the Linn & Lane Timber Company owned the lands in question, including the entire seventeen claims. The Government concedes that conveyances were made to said Linn & Lane Timber Company for said lands at last a short time after the suits were commenced.

This Honorable Court holds that the patents herein can be cancelled as to the Linn & Lane Timber Company on account of concealed fraud. No reason is perceived why such a cancellation could not have been had without making either Smith or Swenson parties. The Court in its opinion said:

"If in any conceivable case a court of equity should look through the form to the substance, it should do so in a case like this. The corporation is Smith. It is Smith seeking shelter behind articles of incorporation invoking the legal fiction of a corporate entity for his protection in the perpetration of a fraud."

And in quoting from State vs. Standard Oil Company, 49 Ohio St. 137,

"The fact must constantly be kept in view that the metaphysical entity has no thought or will of its own; that every act ascribed to it emanates from and is the act of the individuals personated by it; and that it can no more do or act or refrain from doing or acting, contrary to the will of these natural persons than a house can be said to act independently of the will of its owner."

Every act of the Linn & Lane Timber Company which the Court holds prevented the statute of limitations from running as to it, was the act of Smith and was done by him to conceal, not the fraud of the Linn & Lane Timber Company, but his own fraud, and to prevent the Government from recovering, not in reality the property of the Linn & Lane Timber Company, but the property which he had secured from the Government by fraud and which was claimed by him. Every fraudulent act complained of in this case from 1900 down, was perpetrated by Smith or someone in his behalf, and for his benefit.

Smith was served several months before the Linn & Lane Timber Company, and to say that his acts should toll the statute of limitations as to the Linn & Lane Timber Company but not as to himself, seems absolutely contrary to the holding which the Court intended to make herein.

Aside from the concealment by Smith of the alleged interest of the Linn & Lane Timber Company in these lands, it should be borne in mind that the mortgages and deeds given by the entrymen at or

about the time of proof, for the purpose of concealing the fraudulent character of the entries, were made at the instance of Smith or his agent Kribs, and that the false and perjured evidence and testimony given by the entrymen upon the investigations made by the Land Department shortly prior to the patenting of these claims, was given at the instance of agents of Smith and compensation therefor made with Smith's money; and that the deeds of Kribs and wife to C. A. Smith in October, 1904, and of Kribs and wife to Charles J. Swenson, December 28, 1904, were made at the instance of Smith for the purpose of fraudulently and corruptly preventing the Government from recovering the lands in question by making it appear that the lands had passed into the hands of innocent purchasers for value, and to prevent the discovery of the actual nature and character of the fraud perpetrated upon the Government, and that this fraud was not discovered until January, 1905, and then only after a most rigorous and searching investigation and inquiry. Here was fraud of the most aggravated nature tenaciously concealed. Surely the same prevented the statute of limitations from running as to Smith until its discovery in 1905. Especially must this be true in view of the further and continued concealment of fraud by use of the corporate name, Linn & Lane Timber Company.

It is respectfully submitted that a modification of the decree herein should be allowed in conformity with the Court's opinion herein.

Respectfully submitted,

JOHN McCOURT,
United States Attorney.

UNITED STATES OF AMERICA,
District of Oregon, ss:

I, John McCourt, United States Attorney for the District of Oregon, do hereby certify that I have carefully compared the within copy of Motion in the above entitled cause, and that it is a full, true and correct copy of the original Motion and of the whole thereof.

Dated at Portland, Oregon, this 6th day of June, 1912.

JOHN McCOURT,
United States Attorney.

[Endorsed:] Motion for modification of order and decree. Filed June 15, 1912. F. D. Monckton, Clerk.

At a Stated Term, to wit, the September Term, 1912, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-Room, in the City of Portland, in the State of Oregon, on Monday, the Sixteenth Day of September, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present:

Honorable William B. Gilbert, Circuit Judge.
Honorable Erskine M. Ross, Circuit Judge.
Honorable William W. Morrow, Circuit Judge.

No. 1972.

THE LINN & LANE TIMBER COMPANY et al., Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

and

THE UNITED STATES OF AMERICA, Appellant,
vs.
C. A. SMITH et al., Appellees.

Order of Submission of Motion for Modification of Decree, etc.

Ordered, Motion of Counsel for the United States of America for the Modification of the Decree of this Court argued by Mr. United States Attorney John McCourt, on behalf of the motion, and by Mr. G. S. Arnold, counsel for the Linn & Lane Timber Company et al., and in opposition to the motion, and submitted to the Court for consideration and decision.

On consideration of their application therefor, it is further ordered that Messrs. Vaile, McAllister & Vaile of the City of Denver, Colorado, be, and hereby are allowed to file four copies of a printed brief on the said motion as amici curiæ, the said brief being a copy of the Brief of Appellees filed by Messrs. Vaile, McAllister & Vaile in the United States Circuit Court of Appeals for the Eighth Circuit, in the cause entitled The United States of America, Appellant, vs. Exploration Company, Limited, et al., Appellees, No. 3808 in the latter court.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

[Opinion U. S. Circuit Court of Appeals on Motion for Modification of Decree, etc.]

John Lind, A. Ueland, W. M. Jerome, and John M. Gearin, for Appellants.

John McCourt, United States Attorney, for Appellee.

Vaile, McAllister & Vaile, amici curiæ.

Before Gilbert, Ross and Morrow, Circuit Judges.

Per Curiam:

This case came on for rehearing upon motion of the District Attorney of the United States for an amendment of the decree of this Court rendered on May 20, 1912, the decision wherein is reported in Linn & Lane Timber Co. v. United States, 196 Fed. 593.

The motion is based upon the expression of the views of this Court in that part of the opinion in which additional ground was found for sustaining the conclusion of the Court below as to the lands which were patented on August 12, 1902, that Court having found that as to those lands the suit was not barred by the Statute of Limitations. This Court sustained the Court below in that conclusion, principally upon the ground that the Linn & Lane Timber Company and C. A. Smith were one and the same, the corporation belonging to him, and organized by him for no other purpose than to conceal therein the title to the lands which were conveyed to it. The additional ground which this Court found for sustaining the Court below was that the fraud complained of in the bills had been concealed by the defendants, and had not been

discovered by the plaintiff until long after the date of the patents, and that the suits had been commenced within the period of six years after such discovery of fraud.

It is now urged that upon the opinion of this Court so expressed, the United States, which also appealed from the decree of the Court below, was entitled to a decree setting aside all the patents involved in the suits, including those for which patents issued on July 9, 1902, and in support of that view we are referred to the recent decision of the Circuit Court of Appeals for the Eighth Circuit in United States v. Exploration Co. Ltd., which is in line with the views of this Court so expressed.

Upon a careful reconsideration of the authorities we are of the opinion that the fraud of the defendants as alleged in the bills and shown by the facts was sufficient to toll the Statute of Limitations as to all the lands involved in the suits. The fraud not only antedated the patents, but after the patents were issued fraudulent conveyances were made and concealed and kept from record obviously for the purpose of covering up the prior fraudulent transactions.

We find it unnecessary to express an opinion upon the question whether the Court below was in error in holding that the suits were not brought as to the defendant Smith until July 27, 1908, the date of the order directing substitute of service upon him, and that as to him the suits were not begun on May 25, 1908, when subpœnas ad respondendum were issued as against him as well as the other defendants, and placed in the hands of the United States Marshal for service.

The decree of this Court will be amended in accordance with the motion. The causes will be remanded to the Court below to enter decrees for the United States as to all the lands sued for in both suits.

[Endorsed:] Opinion. U. S. Circuit Court of Appeals on Motion for Modification of Decree, etc. Filed Feb. 24, 1913. F. D. Monckton, Clerk.

At a Stated Term, to wit, the October Term, A. D. 1912, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-Room Thereof, in the City of San Francisco, in the State of California, on Monday, the Twenty-fourth Day of February, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present:

Honorable William B. Gilbert, Circuit Judge.
Honorable William W. Morrow, Circuit Judge.
Honorable Charles E. Wolverton, District Judge.

No. 1972.

THE LINN & LANE TIMBER COMPANY et al., Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,
vs.
C. A. SMITH et al., Appellees.

Order Amending Decree.

On consideration of the motion of Mr. United States Attorney John McCourt, filed June 15, 1912, for the amendment of the decree of this Court filed and entered on the 20th day of May, A. D. 1912, in the above-entitled cause, and in accordance with the opinion of this Court this day rendered and filed on said motion, it is ordered that the said decree be, and hereby is amended in accordance with the motion, and that the causes will be remanded to the Court below to enter decrees for the United States as to all the land sued for in both suits.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,
vs.
C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Petition for Appeal to Supreme Court U. S.

The Linn & Lane Timber Company and Charles A. Smith, above named, conceiving themselves aggrieved by the order and decree entered in the above entitled cause on the 20th day of May, 1912, affirming the decree of the Circuit Court of the United States for the District of Oregon, and by the order and decree amending the same, entered on motion of the attorney of said United States on the

24th day of February, 1913, hereby appeal from said order and decree of affirmance and from said order and decree amending the same to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that the appeal be allowed and that a transcript of the record, proceedings and papers upon which said order and decree of affirmance and said order and decree amending the same were made, duly authenticated, may be sent to the said Supreme Court of the United States, and your petitioners pray that said order and decree of affirmance, and the said decree of the Circuit Court of the United States for the District of Oregon may be reviewed and reversed.

Dated, March 10th, 1913.

(Signed) JOHN LIND,
(Signed) A. UELAND,
(Signed) W. M. JEROME,
(Signed) JOHN M. GEARIN,

Solicitors and Counsel for said Appellants, The Linn & Lane Timber Company and Charles A. Smith.

[Endorsed:] Petition for Appeal to Supreme Court U. S. Filed Mar. 25, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Affidavit of Value in Dispute.

STATE OF MINNESOTA,
County of Hennepin, ss:

Before the undersigned, a Notary Public in and for said County, personally appeared Andreas Ueland, who being by me duly sworn,

upon his oath, says that he is one of the solicitors and counsel of record of the Linn & Lane Timber Company and Charles A. Smith, the appellants in said cause, and that the matter in controversy in said cause exceeds One Thousand ($1000) Dollars besides costs.

(Signed) A. UELAND.

Subscribed and sworn to before me this 10th day of March, 1913.

[NOTARIAL SEAL.] (Signed) ALICE L. KERCHER,
Notary Public, Hennepin Co., Minn.

My commission expires June 22, 1913.

[Endorsed:] Affidavit of value in dispute. Filed Mar. 25, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWANSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWANSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Waiver of Joinder on Appeal to Supreme Court U. S.

We, the undersigned, solicitors and counsel of record for appellants, Frederick A. Kribs, and Charles J. Swanson, do consent that appellants, the Linn & Lane Timber Company and Charles A. Smith, appeal to the Supreme Court of the United States from the decree rendered in this cause on the 20th day of May, 1912, and from the order or decree modifying or changing the same without joining in such appeal said Frederick A. Kribs and Charles J. Swanson, or either of them; and as solicitors and counsel for said Frederick A. Kribs and Charles J. Swanson we do waive further notice of such appeal on the part of said Linn & Lane Timber Company and Charles A. Smith and do authorize the judge or court

to allow such appeal or appeals to be taken by said Linn & Lane Timber Company and Charles A. Smith separately.

Dated, February 28th, 1913.

(Signed) ALBERT H. TANNER,
Solicitor and Counsel for Appellant Frederick A. Kribs.
(Signed) JOHN LIND,
(Signed) A. UELAND,
(Signed) W. M. JEROME,
(Signed) JOHN M. GEARIN,
Solicitors and Counsel for Appellant Charles J. Swanson.

[Endorsed:] Waiver of joinder on appeal to Supreme Court U. S. Filed Mar. 25, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,
vs.
C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Assignment of Errors.

The appellants, the Linn and Lane Timber Company and Charles A. Smith, assert that in rendering the decree entered in the above entitled cause on the 20th day of May, 1912, affirming the decree of the Circuit (now District) Court of the United States for the District of Oregon, and by the order and decree amending said decree of May 20th, 1912, entered on the 24th day of February, 1913, the said United States Circuit Court of Appeals erred in the following particulars, to-wit:

(1) It was error to affirm the decree appealed from as *as* to the nine patents of August 12, 1902, because as to these patents the suit was barred by the Act of Congress of March 3d, 1891 (26 St. L.

1093) having not been commenced against the Linn and Lane Timber Company, the owner of the title granted by said patents, within six years after the date of the patents, as required by said act.

(2) It was error to direct the Circuit (now District) Court of the United States for the District of Oregon, to enter a decree, annulling, vacating and setting aside the eight patents of July 9th, 1902, because as to these patents the suit was barred by said Act of Congress of March 3d, 1891, having not been commenced against the Linn and Lane Timber Company, the owner of the title granted by said patents, within six years after the date of the patents, as required by said act.

(3) It was error to direct said Circuit (now District) Court of the United States for the District of Oregon to enter a decree, annulling, vacating and setting aside the eight patents of July 9th, 1902, because as to these patents the suit was barred by said Act of Congress of March 3d, 1891, having not been commenced against Charles A. Smith or Charles J. Swanson, in whom the title to the lands covered by said patents appeared of record when the bill was filed, within six years after the date of said patents, as required by said Act.

(4) It was error to affirm the decree of said lower court as to the nine patents of August 12th, 1902, and to direct said lower court to enter a decree annulling the eight patents of July 9th, 1902,—

(*a*) Because the complainant failed to prove that Frederick A. Kribs, when he purchased the land for which said seventeen patents were issued, had notice of the alleged conspiracies, frauds, or irregularities complained of in the bill in connection with the entries on said lands;

(*b*) Because the complain-t failed to prove that Charles A. Smith, when he purchased the lands for which said seventeen patents were issued had notice of some of the alleged conspiracies, frauds, or irregularities complained of in the bill in connection with the entries on said lands;

(*c*) Because Frederick A. Kribs, for a full and adequate consideration, purchased the lands for which said seventeen patents were issued from the persons who entered and purchased the same from the complainant, with no notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands, but in good faith believing said persons could rightfully and lawfully sell and convey said lands;

(*d*) Because Charles A. Smith, for a full and adequate consideration, purchased the lands for which said seventeen patents were issued from said Frederick A. Kribs (one-fourth interest being conveyed to Charles J. Swanson and three-fourths to himself) with no notice or knowledge of any of the alleged conspiracies, frauds or irrregularities complained of in the bill in connection with the entries on said lands, but in good faith, and that said Smith and Swanson thereafter before the commencement of the suit, conveyed said lands to the Linn & Lane Timber Company;

(*e*) Because the entries of the lands for which said seventeen patents were issued had been fully investigated under the direction of complainant's Secretary of the Interior, by officers of his depart-

ment, with reference to all the alleged conspiracies, frauds and irregularities complained of in the bill in connection with said entries, and that after such investigation, on the evidence adduced, said Secretary had determined and decided said entries to be in all respects lawfully made and valid, and had thereupon directed said seventeen patents to be issued.

(5) It was error to hold the patent to Alexander Gould void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878, (20 St. L. 89).

(6) It was error to hold the patent to Sydney H. Scanland void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(7) It was error to hold the patent to Richard F. Malone void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(8) It was error to hold the patent to John J. Gilliland void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(9) It was error to hold the patent to Louis Maynard void, because the evidence did not show that *that* his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(10) It was error to hold the patent to William J. Lawrence void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(11) It was error to hold the patent to Richard C. Watkins void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(12) It was error to hold the patent to James W. Rozell void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(13) It was error to hold the patent to Cornelius N. Tuthill void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(14) It was error to hold the patent to O. Judd Mealey void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(15) It was error to hold the patent to Charles Wiley void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(16) It was error to hold the patent to Joseph O. Mickalson void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(17) It was error to hold the patent to John Thomas Parker void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 2d, 1878.

(18) It was error to hold the patent to Samuel D. Pickens void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(19) It was error to hold the patent to Joseph H. Steingrandt void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(20) It was error to hold the patent to John A. Thompson void because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

(21) It was error to hold the patent to William W. Billings void, because the evidence did not show that his duplicate written statement to purchase the land for which this patent was issued was made or filed fraudulently or contrary to any of the requirements of Section 2 of the Act of Congress of June 3d, 1878.

Wherefore the said Linn & Lane Timber Company and Charles A. Smith pray that said decree of the United States Circuit Court of Appeals and said decree of the Circuit (now District) Court of the United States for the District of Oregon be reversed.

Dated, March 10th, 1913.

(Signed) JOHN LIND,
(Signed) A. UELAND,
(Signed) W. M. JEROME,
(Signed) JOHN M. GEARIN,

Solicitors and Counsel for Appellants, the Linn & Lane Timber Company and Charles A. Smith.

[Endorsed:] Assignment of errors. Filed Mar. 25, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Bond on Appeal to Supreme Court U. S.

Know all men by these presents that we, The Linn & Lane Timber Company and Charles A. Smith, as principals, and The United States Fidelity and Guaranty Company of Baltimore, as surety, are held and firmly bound unto the United States of America in the full and just sum of Two Thousand Dollars to be paid to the said United States of America, its attorneys or assigns, for which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of March, 1913.

Whereas on the 20th day of May, 1912, upon an appeal in the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the Circuit Court of the United States for the District of Oregon in which the said Linn & Lane Timber Company and Charles A. Smith were the appellants and the said United States of America appellee, and upon an appeal in said Court of Appeals from said decree in which said United States was appellant and said Linn & Lane Timber Company and Charles A. Smith were appellees, an order and decree was entered by the said United States Circuit Court of Appeals affirming the decree appealed from; and

Whereas upon the motion of the Attorney of said United States an order and decree amending said last mentioned decree, was entered on the 24th day of February, 1913; and

Whereas said Linn & Lane Timber Company and Charles A. Smith have obtained from said United States Circuit Court of Appeals an order allowing an appeal to the Supreme Court of the United States to reverse the aforesaid order and decree of affirmance, and said order and decree amending the same, and a citation directed to said United States of America is about to be issued citing and admonishing it to be and appear before the said Supreme Court of the United States to be holden at Washington in the District of Columbia.

Now the condition of the above obligation is such that if the said Linn & Lane Timber Company and Charles A. Smith shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation is to be void, otherwise to remain in full force and virtue.

(Signed) LINN AND LANE TIMBER COMPANY.
(Signed) By A. UELAND,
Its Solicitor and Counsel.
(Signed) CHARLES A. SMITH.
(Signed) By A. UELAND. [SEAL.]
His Solicitor and Counsel.
THE UNITED STATES FIDELITY AND GUARANTY COMPANY.
(Signed) By DOUGLAS R. TATE,
Its Attorney in Fact. [SEAL.]

This bond approved as to form, amount and sufficiency of sureties this 21st day of March, 1913.

(Signed) W. B. GILBERT, *Judge.*

[Endorsed:] Bond on appeal to Supreme Court U. S. Filed Mar. 25, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Supersedeas Order.

This cause coming on to be heard this 21st day of March, 1913, upon the application of the appellants for an appeal to the Supreme Court of the United States, and said appeal having been allowed, it is ordered that the same shall operate as a supersedeas, the appellants having executed bond in the penalty of Two Thousand Dollars, as provided by law, and the Clerk is hereby directed to stay the mandate to the United States Circuit (now District) Court until the further order of this Court.

(Signed) WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed:] Supersedeas Order Filed Mar. 25, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Order Allowing Appeal and Fixing Amount of Bond on Appeal to Supreme Court U. S.

On this 21st day of March, 1913, came the Linn & Lane Timber Company and Charles A. Smith, appellants and appellees in the above entitled cause, and filed here and presented to this court their petition for the allowance of an appeal from the order and decree made and entered in said cause on the 20th day of May, 1912, and from the order and decree amending the same entered on motion of the Attorney of said United States on the 24th day of February, 1913, together with the assignment of errors and praying that a transcript of the record, proceedings and papers upon which said orders and decrees were made, duly authenticated, may be sent to the Supreme Court of the United States; and it appearing that the matter in controversy in said cause exceeds One Thousand ($1,000) Dollars besides costs,

In consideration whereof this Court does hereby allow the said appeal of said appellants and appellees, The Linn & Lane Timber Company and Charles A. Smith, from said order and decree upon said appellants giving a bond according to law and the rules of said Supreme Court in the sum of Two Thousand Dollars to answer all damages and costs, if they shall fail to sustain their said appeal.

(Signed) WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed:] Order Allowing Appeal and Fixing Amount of Bond on Appeal to Supreme Court U. S. Filed Mar. 25, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON, and FREDERICK A. KRIBS, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees.

Præcipe for Transcript on Appeal to Supreme Court of the United States.

To the Clerk of said Court.

SIR: Please make return to the Supreme Court of the United States upon the appeal to said court by the Linn & Lane Timber Company and Charles A. Smith in the above entitled cause and let the return consist of (*a*) the printed transcript of record, (*b*) the order of submission, (*c*) the opinion filed May 20th, 1912, (*d*) the decree of affirmance entered on said date, (*e*) the motion for modification of said decree, (*f*) the opinion and order filed February 24th, 1913, (*g*) the order or decree entered pursuant *modifying* the decree of May 20th, 1912, (*h*) the petition for appeal, (*i*) the assignment of errors, (*j*) the affidavit of value in dispute, (*k*) the order allowing appeal and fixing amount of bond, (*l*) the bond on appeal, (*m*) the supersedeas order, (*n*) the original citation on appeal (*o*) proper certificates as to said printed record and said other proceeding and papers.

Dated March —, 1913.

(Signed) JOHN LIND,
(Signed) A. UELAND,
(Signed) W. M. JEROME,
(Signed) J. M. GEARIN,
Counsel for said Appellants.

The foregoing præcipe for transcript on appeal is agreed to on the part of the appellee, and service of a copy thereof at Portland, Oregon, is admitted this 21″ day of March, 1913.

(Signed) E. A. JOHNSON,
Solicitor for Appellee and United States District Attorney for the District of Oregon.

[Endorsed:] Præcipe for Transcript on Appeal to Supreme Court of the United States. Filed Mar. 25, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

To the United States of America:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, sixty days after the date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the United States Court of Appeals for the Ninth Circuit, wherein the Linn & Lane Timber Company and Charles A. Smith are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Wm. B. Gilbert, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 31st day of March, A. D. 1913.

(Signed) WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

Due service of the foregoing Citation on Appeal is admitted this 4th day of April, 1913.

——— ———,
United States Attorney.

(Signed) JOHN McCOURT,
United States Attorney at Time of Trial and Decision of Above Entitled Suit.

[Endorsed:] Copy of Citation served upon Mr. John McCourt, [U. S. Attorney at Time of Trial and Decision.] Filed Apr. 7, 1913. Frank D. Monckton, Clerk, By Meredith Sawyer, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY et al., Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee,

and

THE UNITED STATES OF AMERICA, Appellant,
vs.
C. A. SMITH et al., Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record Upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing nine hundred and eighty-five (985) pages, numbered from and including one (1) to and including nine hundred and eighty-five (985), to be a full, true and correct copy of the Assignment of Errors and of all proceedings had in the above-entitled case in the United States Circuit Court of Appeals for the Ninth Circuit, including the Opinion filed therein on the 20th day of May, 1912, and the Opinion filed therein on the 24th day of February, 1913, as the same remain on file and appear of record in my office, and that the same, together, constitute a true copy of the complete record prepared pursuant to the praecipe therefor filed by counsel for the appellant on the 25th day of March, 1913, and constitutes the Transcript of Record in the above-entitled cause upon the appeal taken therein to the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this ninth day of April, A. D. 1913.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.
By MEREDITH SAWYER,
Deputy Clerk.

In the United States Circuit Court of Appeals, in and for the Ninth Circuit.

To the United States of America:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, sixty days after the date of this cita-

tion, pursuant to an appeal allowed and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein the Linn & Lane Timber Company and Charles A. Smith are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Wm. B. Gilbert, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 31st day of March, A. D. 1913.

WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

Due Service of the foregoing Citation on Appeal is admitted this 31″ day of March, 1913.

E. A. JOHNSON,
United States Attorney.

[Endorsed:] Docketed. No. 1972. In the United States Circuit Court of Appeals for the Ninth Circuit. Linn & Lane Timber Co., Appellants, vs. United States of America, Appellee. Citation on Appeal to Supreme Court of the United States. Filed Apr. 3, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. Denman and Arnold, Attorneys at Law, Proctors in Admiralty, 1020 Merchants Exchange Building, San Francisco, California.

Endorsed on cover: File No. 23,661. U. S. Circuit Court Appeals, 9th Circuit. Term No. 1086. The Linn & Lane Timber Company and Charles A. Smith, appellants, vs. The United States. Filed April 30th, 1913. File No. 23,661.